

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



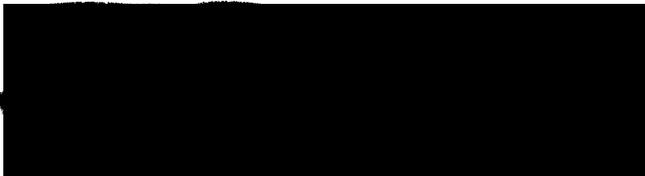
D
1

FILE: WAC 04 044 51963 Office: CALIFORNIA SERVICE CENTER Date: **AUG 25 2005**

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a newspaper serving the Filipino-American community in southern California, covering events in both The Philippines and the United States, with seven employees. It seeks to employ the beneficiary as a legal affairs editor pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition because he determined that the proffered position did not meet the criteria for a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in establishing that its proffered position is a specialty occupation, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a legal affairs editor. Evidence of the beneficiary’s duties includes: the Form I-129; a November 25, 2003 letter of support from the petitioner; and counsel’s March 5, 2004 response to the director’s request for evidence.

As stated by counsel in his March 5, 2004 response to the director’s request for evidence, the proffered position would require the beneficiary to:

- Review, edit and rewrite, as necessary, articles dealing with law, legal affairs, immigration law, Filipino laws and cases in the news; supervise the Legal Affairs Department; and review editorials on law, cases and legislation (40 percent of the beneficiary’s time);
- Research and write articles; keep abreast with changes in immigration law and write columns about the latest immigration laws; prepare articles on Filipino laws to keep readers informed about laws in The Philippines; conduct research and interview experts to obtain the latest information on and changes to laws, rules and regulations in areas of law important to readers (30 percent of the beneficiary’s time);
- Edit and review articles; determine the size and arrangement of material; and select the style and size of material (30 percent of the beneficiary’s time); and
- Confer with the chief editor and heads of production and make decisions affecting publication of articles in his department.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns first to 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

In considering the duties of the proffered position, the AAO has identified two aspects of the petitioner’s description of the proffered position’s duties that appear to be inconsistent with other information submitted by the petitioner. The petitioner has stated that the beneficiary would supervise its legal affairs department.

However, the organizational chart and other materials submitted by the petitioner do not indicate that the petitioner has a legal affairs department. In its November 25, 2003 letter of support, the petitioner also stated that the beneficiary would supervise the layout of legal affairs articles, supervising the layout of the artwork. Again, the petitioner's organizational chart does not indicate the petitioner has a layout staff, although it provides a description of a layout artist in the listing of job descriptions provided in response to the director's request for evidence. As a result, the AAO will discount the petitioner's statements regarding the beneficiary's supervision of a legal affairs department and the layout of the artwork related to the petitioner's copy related to legal issues. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain to reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence point to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-591 (BIA 1988).

Although the AAO does not find the proffered position to include the management or oversight responsibilities described the petitioner, it, nevertheless, concurs with the petitioner's description of its employment as including the duties of an editor. As described at page 275 of the *Handbook*:

Editors review, rewrite, and edit the work of writers. They may also do original writing

Major newspapers and newsmagazines usually employ several types of editors. The *executive editor* oversees *assistant editors* who have responsibility for particular subjects *Copy editors* mostly review and edit a reporter's copy for accuracy, content, grammar, and style.

In smaller organizations, such as small daily or weekly newspapers . . . a single editor may do everything or share responsibility with only a few other people

However, in that the petitioner has indicated that 30 percent of the beneficiary's time would be devoted to writing and reporting on legal issues, the AAO also finds the petitioner's description of its position to include the duties of the occupation of news analysts, reporters, and correspondents. This occupation is described at page 265 of the *Handbook*:

In covering a story, reporters investigate leads and news tips, look at documents, observe events at the scene, and interview people Some journalists also interpret the news or offer opinions to readers, viewers, or listeners. In this role, they are called . . . *columnists*.

[S]ome reporters specialize in fields such as health, politics, foreign affairs

Based on its reading of the duties of the proffered position, the AAO concludes it is that of an editor/journalist and turns to the *Handbook's* discussion of the educational requirements imposed on individuals seeking entry level employment in these occupations. It finds that for both professions, employers impose a degree requirement. The educational requirements for entry-level employment as a journalist are discussed at page 266:

Most employers prefer individuals with a bachelor's degree in journalism or mass communications, but some hire graduates with other majors

For individuals seeking entry-level employment as editors, the requirements are described at page 276:

A college degree generally is required for a position as a writer or editor. Although some employers look for a broad liberal arts background, most prefer to hire people with degrees in communications, journalism, or English. For those who specialize in a particular area, such as fashion, business, or legal issues, additional background in the chosen field is expected . . .

However, while the *Handbook* indicates that individuals seeking employment as journalists or newspaper editors must have degrees, those degrees are not required to be in a specific specialty directly related to journalism, as required by statute and regulation for H-1B employment. Although most employers may prefer to hire individuals with degrees in journalism or communications, employer preference does not establish a specific degree requirement. It is not synonymous with the normally required language of the first criterion. Nor does the *Handbook's* statement regarding the "additional background" expected of individuals who write about legal issues or edit such work establish a degree requirement in a specific specialty. Requiring additional background in a particular field cannot be equated with a degree requirement. Accordingly, as editor/journalist positions impose no specific degree requirement on individuals seeking employment, the proffered position cannot be established as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the petitioner may be able to qualify its proffered position under one of the three remaining criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). It concludes that the proffered position does not qualify as a specialty occupation under either prong of the second criterion – a specific degree requirement is common to the industry in parallel positions among similar organizations or the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty. Although counsel has submitted three Internet employment advertisements and a statement from what he has described as a rival newspaper to establish the educational requirements for writer/editor positions, these materials do not identify the proffered position with an industry-wide educational standard. The evidence of record also fails to describe a position that is distinguishable, by uniqueness or greater complexity, from a similar but non-degree-requiring position, as required by the second prong. With regard to the third criterion – the employer normally requires a degree or its equivalent for the position – counsel has submitted a listing of the degreed individuals who work for or contribute to the petitioner's publication. This list, which is not supported by evidence documenting either the petitioner's employment of the individuals listed or their degrees, does not establish the petitioner's history regarding its recruitment and hiring for the position.

However, the AAO does find the petitioner to have met the requirements of the fourth criterion – the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree or higher degree. The proffered position would require the beneficiary to perform the duties of a legal affairs editor, which, as described by the petitioner, combine the work of an editor and journalist. In that the beneficiary's writing and editorial duties would

require him to analyze both U.S. and Filipino legal issues and legislation for the petitioner's readership, the AAO concludes that the knowledge required to perform such duties would usually be associated with the attainment of a baccalaureate degree in journalism or communications, with a concentration in law-related courses, or a law degree. Therefore, the AAO withdraws the director's determination that the proffered position is not a specialty occupation.

For the reasons related in the preceding discussion, the petitioner has established its proffered position as a specialty occupation. The petition may not be approved, however, as the record does not reflect that the beneficiary is qualified to perform the duties of the specialty occupation. The record reflects that the beneficiary obtained a bachelor of laws degree from the University of Santo Tomas in The Philippines on March 22, 1986. No degree equivalency is of record.

The director's decision will be withdrawn and the case remanded to the director for a decision as to whether the beneficiary qualifies to perform the duties of a specialty occupation. The director must afford the petitioner a reasonable opportunity to submit evidence relating to the beneficiary's qualifications. The director shall then issue a new decision based on the evidence of record, as it relates to the statutory and regulatory requirements for H-1B nonimmigrant visa eligibility.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision of March 22, 2004 is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, shall be certified to the AAO for review.