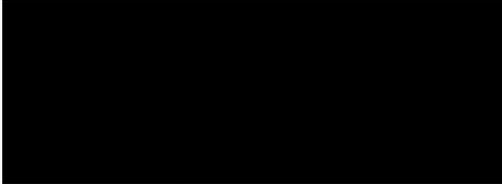


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U.S. Department of Homeland Security  
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U.S. Citizenship  
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Services



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FILE: WAC 02 218 51097

Office: CALIFORNIA SERVICE CENTER

Date:

**JAN 04 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 service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a nonprofit organization that will help visiting doctors and scientists coming to work in U.S. laboratories to get settled. The petitioner, currently employing two workers, seeks to employ the beneficiary for 10-30 hours a week as an editor-translator for three years. The director determined the petitioner the proffered position was not a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), and further faulted the petitioner under “20 C.F.R. § 655.0(a)(i) [sic]” for not testing the U.S. job market by posting a job announcement.

On appeal, counsel submits a brief and additional documentation.

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 an occupation 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.

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 Service (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 6, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. To help visiting Japanese doctors and researchers adjust to their new surroundings, the beneficiary would research, write and edit as well as update help manuals in both English and Japanese. The manuals would tell the visiting scientists how to:

- Obtain driver's licenses, Social Security cards and tax ID numbers;
- Stay in status;
- Understand employment contracts;
- File tax returns;
- Find housing and sign leases;
- Set up telephone and Internet service;
- Open banking and credit-card accounts;
- Get insured;
- Stay safe;
- Plan domestic and foreign travel;
- Enroll children in schools and programs;
- Take part in cultural events; and
- Use public transportation.

The petitioner began operations in 1998 and has two employees who currently help visiting Japanese doctors and scientists to get settled on an "ad-hoc basis," according to the petitioner's April 1, 2003 letter. Concluding nearly all the visitors have "almost identical issues," the petitioner has determined that a comprehensive manual could accomplish much the same result, with the beneficiary taking over the manual-writing task plus the petitioner's newsletter and public Web site. The petitioner asserts that a qualified candidate for the proffered position would have "at least a bachelor [sic] degree in law or related."

The director determined that the proffered position had elements of two other job titles and found it involved the duties of someone doing public relations and translations combined. He, however, found that the specific duties did not meet any of the four criteria for a specialty occupation that are found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Basing his decision on the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director determined that a baccalaureate degree or its equivalent in a specific specialty was not a minimum requirement for entry into the proffered position and that the duties were not of such complexity that they would require a bachelor's degree or the equivalent.

On appeal, counsel asserts that the proffered position should be classified as a specialty occupation in editing and translating, as described in the Form I-129 petition, instead of in public relations. He further disputes the decision based upon the director's finding that the petitioner failed under 20 C.F.R. § 655.0(a)(i) to post a job announcement.

Contrary to the director's finding, 20 C.F.R. § 655.0(a)(1) has no applicability to the responsibilities of the H-1B employer. The director's finding that the employer failed to comply with the provisions of 20 C.F.R. §

655.0(a)(i) are withdrawn. The director was correct in his determination, however, that the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In these proceedings, the duties of the position are dispositive rather than the job title. The proffered position appears to be that of a public relations specialist, although as to any one of the three job categories under discussion -- editor-writer, translator or public relations specialist -- the *Handbook* finds no entry requirement for a baccalaureate degree or higher or its equivalent in a specialized area.

Thus, the *Handbook* indicates that many entry-level writers and editors have a college major in English, journalism, or communications, other employers seek applicants with demonstrated communication skills and training or experience in a field related to the firm's business such as business practices, international relations, trade relations or immigration law. Again, under "Interpreters and Translators," the *Handbook* states that "the educational backgrounds of interpreters and translators vary," adding while "a bachelor's degree is almost always required, interpreters and translators note that it is acceptable to major in something other than a language." Again, as to the entry requirements for public relations specialists, the *Handbook* states that "there are no defined standards for entry into a public relations career," whether a bachelor's in public relations or only "demonstrated communication skills and training."

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The record, however, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the position's duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.