

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

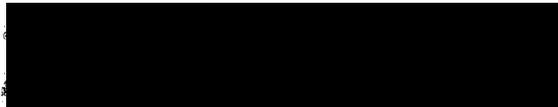
PUBLIC COPY



D1

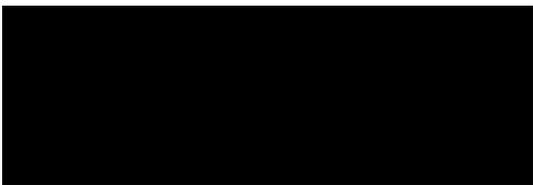
FILE: WAC 03 138 50786 Office: CALIFORNIA SERVICE CENTER Date: **MAR 18 2005**

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.

for Michael T. Kelley
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of 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 music/television entertainment company that seeks to employ the beneficiary as a copywriter. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of 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 Services (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; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a copywriter. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: writing advertisements for publication or the broadcast media in order to promote goods and services; consulting with sales media and marketing representatives in order to obtain information on products and services and discuss the advertising copy's style and length; obtaining information through research and interviews; reviewing advertising trends and consumer surveys regarding the marketing of goods and services; writing articles, bulletins, sales letters, and speeches; and creating and entering information in the computer to prepare advertising copy. The petitioner reported that its promotions programs include direct mail, telemarketing, television and radio advertising, catalogs, exhibits, websites, in-store displays, and special events. The petitioner stated that the beneficiary is qualified for the proffered position based on her bachelor of arts degree in communications and journalism from the University de la Sabana in Colombia.

The director determined that the proffered position was not a specialty occupation. According to the director, the job description appeared to be copied from the *Dictionary of Occupational Titles (DOT)*. The director stated that the beneficiary's duties reflect various occupations, some of which are not specialty occupations. The director found that the majority of the beneficiary's duties are performed by advertising, marketing, promotions, public relations, and sales managers, as described in the Department of Labor's (DOL) *Occupational Outlook Handbook (the Handbook)*. These positions, the director stated, do not require baccalaureate-level training as a normal, industry-wide minimum requirement for entry. The director stated that the proffered position is newly created; that the petitioner did not furnish the requested job posting of the position; that there is no reasonable and credible offer of employment that is consistent with the petitioner's needs; and that the proposed duties and stated level of responsibility do not indicate complexity or authority that is beyond what is normally encountered in the occupational field.

On appeal, counsel states that the *DOT* and the *Handbook* disclose that the proffered position is a specialty occupation. The *Handbook*, counsel asserts, reports that employers require a baccalaureate degree in communications, journalism, English, or a related field. Counsel states that the *DOT* indicates that a copywriter requires a baccalaureate degree. Referring to a letter from Mr. Carl H. Walther of the International Education Council, counsel asserts that it shows that writers and editors must have a college degree or the equivalency. Counsel emphasizes that the beneficiary will report to the chief executive officer. According to counsel, the regulations and the Act do not indicate that the petitioner is required to furnish to CIS a job posting for the proffered position; the DOL requires the posting of the labor condition application (LCA).

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. 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. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Counsel states that the proffered position resembles a copywriter, and that the *Handbook*, the *DOT*, and Mr. Carl H. Walther's letter describes a copy writer as requiring a specific baccalaureate degree. Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the *DOT*. However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and the *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the *DOT*.

The *Handbook* reports "copy writers prepare advertising copy for use by publication or broadcast media or to promote the sale of goods and services"; thus, the proffered position resembles a copy writer. The *Handbook* indicates that a "college degree generally is required for a position as a writer or editor," and that "[a]lthough some employers look for a broad liberal arts background, most prefer to hire people with degrees in communications, journalism, or English."

The petitioner fails to establish the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) because the *Handbook* states that for copywriters, employers do not require a baccalaureate degree in a specific specialty. Some employers accept candidates with broad liberal arts backgrounds. The *Handbook* indicates that most employers prefer to

hire candidates with degrees in communications, journalism, or English. Nonetheless, a preference is not synonymous with a requirement. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), specifically defines the term "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, copywriter.

Because the *Handbook* explains that employers do not require a specific baccalaureate degree for a copywriter, the letter from Mr. Walther, which refers to the *Handbook* to establish the educational requirements of a copywriter, is not persuasive. In the letter, Mr. Walther states that four-year colleges and universities in the United States offer programs in preparation for careers as writers and editors. Whether an institution offers such a program is irrelevant in establishing the educational requirements of employers. Thus, the letter fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Counsel asserts that the regulations and the Act do not indicate that a petitioner is required to furnish a job posting for the proffered position. This assertion is not convincing. The director has the authority to request evidence to corroborate assertions made by the petitioner.

The petitioner has not satisfied either of the two alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The evidence in the record does not establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Further, the evidence does not establish that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As discussed above, the *Handbook* reveals that employers do not require a specific baccalaureate degree for a copywriter.

No evidence in the record satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. None of the beneficiary's duties exceed the scope of a copywriter, an occupation which the *Handbook* indicates does not require a baccalaureate degree in a specific specialty.

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. The petition is denied.