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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536



Public Copy

File: WAC-00-026-53596

Office: California Service Center

Date: JUL 11 2001

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a computer wholesale business with 24 employees and a gross annual income of \$38,587,000. It seeks to employ the beneficiary as a technical writer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director denied the petition because a review of the Department of Labor's Occupational Outlook Handbook (Handbook) finds that baccalaureate level training is not a necessary requirement for entry into a technical writing occupation. The director further found that the petitioner had not shown that it normally requires applicants for the position to possess such degree or that the proposed duties were so complex as to require such degree. On appeal, counsel states in part that both precedent and unprecedented Service opinions support the conclusion that the proffered position is a specialty occupation. Counsel also states that a review of the Handbook also finds that the proffered position is a specialty occupation.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. prepare and edit product documentation, technical publications, product and project schedules as well as press release for new products/services;

2. participate in related project review to study and observe proposed product/project, and then prepare necessary documentation and/or technical reports such as technical summaries of upcoming projects, project proposals, and promotion/marketing materials;
3. interface with marketing and sales department to develop and design proposal;
4. prepare and edit newsletter/press release about the company's strategies, policies and product technical information, and the company's performance; and
5. other job duties as assigned.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in journalism or a related field. A review of the Handbook, 2000-2001 edition, at 245 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a writer or editor. While some employers prefer a baccalaureate degree in communications, journalism, or English, others prefer a broad liberal arts background. In addition, some transfer from jobs as technicians, scientists, or engineers while others begin as research assistants, or trainees in a technical information department, develop technical communication skills, and then assume writing duties. Thus, the petitioner has not shown that a

bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as journalism, for the offered position. Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed 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.

Counsel cites various unpublished AAU decisions, which have no precedential effect in this proceeding. See 8 C.F.R. 103.3(c). Counsel further states that the Board of Immigration Appeals held that the specific position of technical writer requires at minimum a bachelor's degree for entry into such a profession. Unlike the beneficiary in the present case, however, the beneficiary in Matter of Desai, 17 I&N Dec. 569 (BIA 1980) possessed the equivalent of a bachelor of science degree in mechanical engineering in addition to a degree in journalism. In the published decision, the findings of a professional technical writing organization, the Society for Technical Communication, located in Washington D.C. were noted as follows:

The most usual educational preparation for a career in technical writing is a bachelor's degree from an accredited college or university, with emphasis on both writing and science.

Such finding was corroborated by the statements of three editors of various professional technical magazines and journals, as well as by the director of the Technical Communications program at the University of Minnesota. Even if the Service were to conclude that the precedent decision was analogous to the present case, it cannot be concluded that the proffered position is a specialty occupation as the petitioner does not require a bachelor's degree with an emphasis on both writing and science. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.