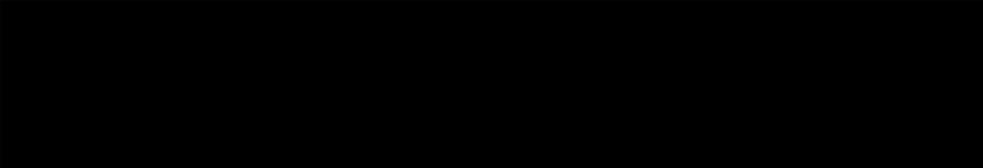




U.S. Department of Justice
Immigration and Naturalization Service

DZ

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



File: WAC-00-046-51494 Office: California Service Center Date: JUN 7 2001

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

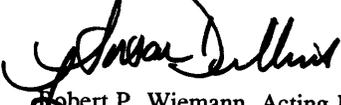
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 Korean newspaper business with 170 employees and a gross annual income of \$16.5 million. It seeks to employ the beneficiary as a news reporter for a period of two 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 the positions of writer and reporter have no requirement of a baccalaureate or higher degree in a specialized area. On appeal, counsel states that the Department of Labor's Occupational Outlook Handbook (Handbook) clearly and unequivocally establishes that a baccalaureate degree in journalism, communications, or a related field is normally required for entry in the occupations of a reporter or writer/editor.

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:

...collect and analyze information regarding news worthy events that relate to Korean Americans in the United States for our Economy Section. The occupant of this position will also gather and verify factual information regarding articles through interview, observation and research; Attend gallery, museum exhibits, private showings and related functions; Organize material,

determine slant or emphasis and write articles according to prescribed editorial style and format standards.

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 of news reporter/writer would normally require a bachelor's degree in journalism, communications, or a related field. In its Handbook, 2000-2001 edition, at page 240, the Department of Labor (DOL) describes the jobs of news analysts, reporters, and correspondents as follows:

Most employers prefer individuals with a bachelor's degree in journalism, but some hire graduates with other majors...Large city newspapers and stations can also prefer candidates with a degree in a subject-matter specialty such as economics, political science, or business...

As the record indicates that the petitioner is the largest newspaper in circulation of the Korean language newspapers in the U.S. with 170 employees and a gross annual income of over \$16.5 million, it appears that degrees in other subject matters such as economics, political science, and business would be equally welcome. It is noted that the offered position is in the petitioner's Economy Section.

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 or communications, 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered 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.

ORDER: The appeal is dismissed.