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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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prevent clearly unwarranted
invasion of personal privacy**



APR 14 2003

File: WAC 02 010 50424 Office: CALIFORNIA SERVICE CENTER Date:

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:



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INSTRUCTIONS:

This is the decision 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a California tours guide publisher that has 11 employees and a gross annual income of \$750,000 dollars. It seeks to temporarily employ the beneficiary as a magazine reporter/correspondent for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the Bureau erred in ignoring the beneficiary's second college degree and other documentation that the petitioner submitted.

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.

The term "specialty occupation" is 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 field 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.

The issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation. In the original petition received by the California Service Center on October 3, 2001, the petitioner described the position as a reporter for a Japanese language tours magazine for Japanese tourists visiting Las Vegas, Nevada, Los Angeles, California and the State of Hawaii. In the I-129 petition, the petitioner explained the duties of the proffered position as follows:

To perform duties as magazine reporter: gather information and prepare stories to inform Japanese about local, state and national events and attraction spots; investigate leads and news tips and search and review documents to obtain information to write stories and/or reports; observe on-site scenes and events and interview people; takes notes for story gathering; layout pages, edit wire service copy and write editorials, also responsible for writing and materials for our subscribers.

In a cover letter, the petitioner added the following:

As our targeted customers/subscribers are Japanese nationals, we are in need of a reporter who has the Japanese language speaking and writing skills as well as the capabilities and knowledge to organize gather data and materials, since he/she is required to conduct research/survey to gather facts and interview individuals or organizations to formulate and plan out stories and reports on various sources, verify facts by researching and write, (sic), r-write/edit the stories based on gathered facts for final print.

[The beneficiary] shall perform duties of this offered position entailing knowledge and skills in business administration/management and her academic training with focused studies in communications using application programs in conjunction with our computer systems' capability.

The petitioner also submitted an educational equivalency document from World Education Services that stated the beneficiary's two undergraduate degrees, the first one in business administration

and the second one in communications, were the educational equivalent of bachelor degrees from accredited U.S. universities in the same subject matters. The petitioner also submitted a sample of its publication, *Japanese Tourist Guide*. Finally the petitioner referenced the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* excerpt on the educational or training requirements for magazine reporters.

On November 23, 2001, the director asked for further information with regard to whether the proffered position was a specialty occupation. In particular, the director requested a detailed statement on the beneficiary's specific duties, the percentage of time to be spent on each duty, level of responsibility, hours per week of work, types of employees supervised, and the minimum education, training and experience necessary to do the proffered position. In addition, the director requested evidence on why the work to be performed required the services of a person who had a college degree or its equivalent. Finally the director asked the petitioner to provide evidence to establish any of the four criteria utilized to qualify the proffered position as a specialty occupation, as outlined in 8 C.F.R. § 214.2 (h) (4) (iii) (A).

In response, the petitioner reiterated the basic duties of the proffered position. The petitioner asserted that a reporter for a tourist guide magazine should be recognized and afforded the same status as a magazine reporter, a classification examined in the *Handbook*. In addition, the petitioner described the types of articles written for its magazine and stated that the publication of infomercials was a new trend for magazines to promote commercial products or services. In addressing the issue of time spent performing the various duties of the proffered position, the petitioner stated:

[all] the tasks are equally important and requiring the same amount of attention while an estimated 75% of the time should be accorded to gathering information and writing. We have no specific calculation on the proportion and percentage breakdown of the duties involved in this position.

Finally the petitioner stated the *Handbook* had reported that a bachelor's degree was required for magazine writers with employers looking for graduates with a degree in journalism while others prefer a degree in other fields such as business, or economics. The petitioner stated that such *Handbook* information established the industry standard for the proffered position.

The director denied the petition and stated that the evidence submitted by the petitioner did not establish that the proffered position had duties that demonstrated a professional complexity. On appeal, counsel asserts that the duties of the proffered position as outlined previously by the petitioner correspond to the *Handbook* classification of news analysts, reporters, and correspondents which states that reporters "relay information to

the public to be informed." Counsel cites to the 2002-2003 edition of the *Handbook* and to a State of California Employment Development brochure in maintaining that the proffered position requires a bachelor's degree for entry into the proffered position. In examining the beneficiary's qualifications, counsel states that the Bureau did not acknowledge that the beneficiary also has an undergraduate degree in communications. According to counsel, the college coursework required for a communications degree is also found in the major coursework required for a journalism degree. Finally, counsel states the following: "It has been previously determined in countless submitted matters that a reporter's position meets the specialty occupation criteria requiring at least a bachelor's degree."

Upon review of the record, the petitioner has not presented a persuasive argument for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position as a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)

The Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

Although both the petitioner and counsel have asserted that the proffered position is that of magazine reporter, the duties of the proffered position of magazine reporter do not appear analogous to the *Handbook* description of reporter on pages 137, 138, and 139. For example, the *Handbook* classification on page 137 states:

News analysts, reporters, and correspondents play a key role in our society. They gather information, prepare stories, and make broadcasts that inform us about local, State, national, and international events; present points of view on current issues; and report on the actions of public officials, corporate executives, special-interest groups, and others who exercise power.

The record of proceeding as presently constituted contains no evidence that the petitioner's publication covers any local, State, national or international events, presents any points of view on current issues, or reports on the actions of public officials, among other groups. In addition, the petitioner's publication, as established by the sample placed on the record, is published on a seasonal basis, measures 5 and one half inches by eight inches, and has 67 pages. Based on the English language titles in the representative sample, some eleven pages appear to contain very brief articles on the main attractions of [REDACTED]

The remaining pages are primarily advertisements for consumer items, hotels, and sports activities. To the extent that the petitioner provided no translations of the Japanese language articles with more extensive text, the petitioner did not establish any connection between the writing in the petitioner's publication and the work performed by news analysts, reporters, or correspondents.

Based on the contents of the petitioner's publication, the proffered position appears to be more appropriately described as an ad writer or simply as a writer. With regard to the classification of writer, on page 145, the *Handbook* states: "Writers and authors develop original fiction and nonfiction for books, magazines and trade journals, newspapers, online publications, company newsletters, radio and television broadcasts, motion pictures, and advertisements." With regard to the training, or other qualifications for positions within this field, the *Handbook* states:

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. Knowledge of a second language is helpful for some positions.

With regard to either the reporter or the writer classification, the *Handbook* does not establish any specific specialty for the proffered position, although the *Handbook* states that some employers may have certain educational credential preferences. The critical element is not the title of the proffered position or 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 bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹

As stated previously, the statute establishes that the petitioner must show that the proffered position requires a baccalaureate degree or higher, or the equivalent, in a specific specialty. (Emphasis added.) To interpret the criteria in 8 C.F.R. § 214.2(h) (4)(iii) (A) as solely requiring a bachelor's degree in any field of study is an incorrect interpretation. Without more

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See *Defensor v. Meissner* 201 F.3d 388 (5th Cir. 2000).

persuasive evidence, the petitioner has not established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

II. 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 - 8 C.F.R. § 214.1(h)(4)(iii)(A)(2)

A. Degree Requirement is Common to the Industry

Factors often considered by the Bureau when determining the industry standard include: whether the Department of Labor's (DOL) *Occupation Outlook Handbook (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." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for a magazine reporter or writer were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner submitted no further evidence. In addition, the petitioner submitted no documentation that any professional press or writers association has made a bachelor's degree a requirement for entry into either field, nor has it submitted letters or affidavits from firms or individuals in either industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not established that the degree requirement is common in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, the petitioner has submitted no documentation that the proffered position would involve duties seen as either unique or complex that only an individual with a degree in a specific specialty could perform them. For example, although the petitioner was asked to provide information on the projected percentage of time to be utilized by the beneficiary in various duties, no such breakdown was provided. Such a breakdown could have provided a clearer picture of the mix of duties, and any complexity of these duties. To date the record contains no further information on any complex or unique features of the proffered position.

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h)(4)(iii)(A)(3)

With regard to the instant petition, the petitioner did not submit any documentation with regard to other employees hired in similar positions. Although the record reflects that the petitioner has 11 employees, the petitioner provided no further information on these employees and their specific duties and educational credentials.

IV. The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree - 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)

As stated previously, the petitioner has placed no information on the record with regard to the specialized and complex nature of the proffered position. To date, the proffered position which entails writing for a tourist guide magazine appears to be no more specialized or complex than writing for any other tourist guide magazine. There is no information on the record to indicate that interviewing, researching, or writing for a Japanese language publication is any more complicated than writing for any other foreign language publication. There is no information as to any particular volume of publishing, or difficulty of publishing that would add any weight to the present consideration of the specialized nature of the position's specific duties. Without more persuasive evidence as to the specialized or complex nature of the petitioner's operations and publications, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that any of the four criteria 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.