

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

122

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

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS. 3/F
Washington, D.C. 20536



AUG 18 2003

File: WAC 02 161 52074 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:

SELF REPRESENTED

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a law firm that provides legal services to the general public. It has five employees and a gross annual income of approximately \$130,000. The petitioner seeks to employ the beneficiary as a website marketing editor for a period of three years. The director determined that the proffered position failed to qualify as a specialty occupation, and that the petitioner had not established that the beneficiary was qualified to perform the duties associated with a specialty occupation.

On appeal, counsel submits a brief. Counsel states, in part, that the proffered position is a specialty occupation, and that the position requires the services of a writer or editor as defined in the U.S. Department of Labor's *Occupational Outlook Handbook*, 2002-03, (*Handbook*). Counsel further indicates that the beneficiary is qualified to perform the duties of the proffered position.

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.

The term "specialty occupation" is further 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.

The Bureau does not simply rely on a position's title however, 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 Bureau considers. In the I-129 petition, the duties of the proffered position were set forth as follows:

- Writes and edits editorial and commercial content for web site and online media;

- Conducts technical preparation and processing of site content;
- Provides input and guidance on integration of web site into overall marketing efforts;
- Utilizes the web for information and source material for daily and long-term editorial and commercial projects;
- Manages the data base for easy retrieval of internet links and write copy in a variety of styles and editorial and commercial voices;
- Utilizes HTML and art production software to maximize editorial and commercial content; [and]
- Edits, copies, and refreshes content to keep text and images relevant and current.

The director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner provide evidence that the proffered position qualified as specialty occupation, and that the beneficiary's training and/or work experience qualified the beneficiary to perform the duties of a specialty occupation. In response to that request, the petitioner asserted that the proffered position requires the duties of a writer or editor, and that those positions are specialty occupations. The petitioner then restated the duties of the position, while adding that the proffered position requires the knowledge and ability to do the following:

- Research and collect legal news and updates from [the] Internet and other legal publications;
- Interview legal staff to gather critical information about strategic projects;
- Write, document, [and] develop additional content to support projects for inclusion in [the] website;
- Organize, create, maintain, [and] write or rewrite Help files, FAQs and client support information as necessary;
- Write, develop, maintain, and manage editorial, marketing, features, projects, and news content of internet website; [and]
- Work closely with [the] legal staff to maintain [the] marketing style guide and provide editorial input for special reviews of services features.

In the *Occupational Outlook Handbook*, 2002-03, at 145-146, the Department of Labor describes, in part, the duties of writers and editors as follows:

Writers and editors communicate through the written word. Writers and editors generally fall into one of three categories. *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. *Technical writers* develop scientific or technical materials, such as scientific and medical reports, equipment manuals, appendices, or operating and maintenance instructions. They also may assist in layout work. *Editors* select and prepare material for publication or broadcast and review and prepare a writer's work for publication or dissemination.

. . . .

Many writers prepare material directly for the Internet. For example, they may write for electronic newspapers or magazines, create short fiction, or produce technical documentation only available online. Also, they may write the text of Web sites. These writers should be knowledgeable about graphic design, page layout and desktop publishing software. Additionally, they should be familiar with interactive technologies of the Web so they can blend text, graphics, and sound together.

A college degree is generally required for a position as a writer or editor. Most employers prefer to hire people with degrees in communications, journalism or English. Additional background in the chosen field is expected, however, for writing in specialized areas such as fashion, business or legal issues. *Id.* at 147.

The job description provided by the petitioner is not specific enough to conclude that the proffered position requires the services of a writer or editor. The petitioner indicates that the beneficiary will write and edit editorial and commercial content for the web site. There is no indication, however, as to the complexity of the writing required. It is unclear whether the beneficiary would prepare text discussing legal issues for the petitioner's clientele, or simply organize the web site's layout and add general promotional text to supplement the petitioner's marketing efforts.

The duties of the proffered position are more closely related to those performed by desktop publishers. With regard to this position, the *Handbook* provides as follows:

Using computer software, desktop publishers format and combine text, numerical data, photographs, charts, and other visual graphic elements to produce publication-ready material. Depending on the nature of a particular project,

desktop publishers may write and edit text, create graphics to accompany text, convert photographs and drawings into digital images and then manipulate those images, design page layouts, create proposals, develop presentations and advertising campaigns, typeset and do color separation, and translate electronic information onto film or other traditional forms. Materials produced by desktop publishers include books, business cards, calendars, magazines, newsletters and newspapers . . .

Id. at 385.

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 qualify the offered position as a specialty occupation. A baccalaureate degree, or its equivalent, is not the minimum requirement for entry into the position of a desktop publisher. Most qualify by taking classes or completing certification programs at vocational schools, universities, or via the Internet. *Id.* at 385. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position. Third, the petitioner failed to present any evidence to establish that parallel positions among similar organizations in the industry commonly require a bachelor's degree or its equivalent, or that the subject position is so complex or unique that it could be performed only by an individual with a bachelor's degree. 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 those duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is therefore, concluded, that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations. The beneficiary's qualifications to perform the duties associated with the proffered position will not be addressed, as it has been determined that the position is not a specialty occupation. That issue is, therefore, irrelevant.

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.