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

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
425 I Street, N.W.
Washington, DC 20536



DEC 12 2003

File: LIN 03 186 51912 Office: NEBRASKA 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:



Identifying data deleted to
prevent identity unwarranted
invasion of personal privacy

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 Citizenship and Immigration Services (CIS) 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 Director, Nebraska Service Center, denied the nonimmigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a weekly newspaper that has 35 employees and a gross annual income of \$1,877,011. It seeks to temporarily employ the beneficiary as a staff reporter 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 *Matter of Perez*, a precedent decision, established that journalism is considered a specialty occupation. Counsel resubmits letters from persons in the field of journalism to establish that the industry standard in the United States for entry-level journalism positions is a baccalaureate degree in journalism.

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.

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 proffered position is a specialty occupation. In the original petition received by the Nebraska Service Center on May 23, 2003, the petitioner described the duties of the proffered position as follows:

The staff reporter is responsible for generating ideas for feature stories by researching and analyzing news leads to determine newsworthy events. She gathers factual information on news leads and assigned topics, and verifies this information through interview, observation, and research.

The staff reporter specializes in the following areas: [c]ity and [v]illage [c]ouncil meetings, [s]chool [b]oard meetings, [p]olice blotters, and theater reviews. In researching and writing news articles, the reporter must attend Palos Heights City Council meetings, Palos Heights City Council committee meetings, Palos Park Village Council meetings, meetings of Palos School District 128 Board of Education, and attend other local organization and board meetings as assigned by the editor. She also takes photographs as assigned. Having gathered the above materials and information, the staff reporter is expected to write clear and interesting stories in a newspaper format.

The petitioner also submitted a letter from Jack Murray, editor of *The Reporter*, a weekly newspaper in the Chicago area, and a letter from Professor Louis Liebovich, Department of Journalism, University of Illinois, at Champaign-Urbana. Both letters stated that in the professional opinions of the writers, the newspaper industry at a minimum requires a baccalaureate degree in journalism for a staff reporter position. The petitioner also submitted copies of the beneficiary's diploma for a master's degree in journalism, and her graduate coursework transcript from the University of Illinois, Champaign-Urbana.

On July 21, 2003, the director asked for further information with regard to the beneficiary's qualifications for the proffered position and other documentary evidence to establish an industry-wide standard or any other criteria outlined in 8 C.F.R.

§ 214.2(h)(4)(iii)(A). On August 1, 2003, the petitioner stated that the beneficiary had a master's degree in journalism from the University of Illinois, Champaign-Urbana and resubmitted copies of both the beneficiary's diploma and her coursework. To establish the industry wide standard criterion, the petitioner submitted a letter from John Etheredge, the news editor for the *Ledger-Sentinel* in Oswego, Illinois. The petitioner described Mr. Etheredge as past president and current member of the board of directors of the Northern Illinois Newspaper Association (NINA), an organization of 68 Northern Illinois newspapers and their staffs. The petitioner also submitted a letter from Professor Ronald E. Yates, Chair of the Department of Journalism at the University of Illinois, as well as from Dan Haley, editor and publisher, *Wednesday Journal*, Oak Park, Illinois.

On August 8, 2003, the director made a further request for a detailed description of the routine, day-to-day tasks that the beneficiary would perform and the percentage of weekly hours that would be devoted to each of the tasks. On August 11, 2003, the petitioner responded with a detailed description of the beneficiary's position that indicated she would spend 50 percent of her time writing new articles, feature stories and cutlines; 7.5 percent of her time editing materials; 20 percent of her time developing story ideas by analyzing and gathering factual information; 15 percent of her time conducting research to verify the collected information; and 7.5 percent of her time developing ideas for feature stories by researching news leads. The petitioner also referred to the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)* and its classification of the reporter position.

On August 18, 2003, the director denied the petition. With reference to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* information on news reporter positions, the director stated that, although the *Handbook* found that most employers prefer individuals with bachelor's degrees in journalism, there were some employers who hired individuals with degree majors in other areas. The director determined that the petitioner had not established that a bachelor's degree in a specific specialty was the minimum requirement for entry into the position. The director also stated that the affidavits submitted by the petitioners did not provide factual evidence to support the authors' assertions. In the absence of factual evidence, the director considered the affidavits to be only advisory in nature. The director determined that the petitioner failed to establish that the requirement for a journalism degree was common to the newspaper industry. The director found that the petitioner also had not established any other of the remaining criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel refers to *Matter of Perez*, 12 I&N Dec. 701 (Dist. Dir. 1968), that examined the denial of an immigrant petition for a Philippine journalist. Counsel also refers to the Department of State (DOS) regulations contained in 22 C.F.R. § 62.3

with regard to that agency's definition of specialty occupation. Counsel states that DOS mentions print journalism as an example of a specialty occupation in its regulations. Counsel also refers to the H-1B petitions section of the Adjudicator's Handbook, a manual prepared by Citizenship and Immigration Services (CIS) for its adjudicators. Counsel notes that this document lists *Matter of Perez* when looking at precedent decisions and whether certain professions qualify as specialty occupations. With regard to the affidavits it submitted to the record from newspaper editors and newspaper association leaders, counsel states that these affidavits contain the professional opinions of their authors and these letters should be accepted as evidence.

Counsel also asserts that the mere fact that some employers may hire news reporter candidates with bachelor degrees in other subjects is not sufficient to establish that a news reporter is not a specialty occupation. Counsel notes that the *Handbook*, in its review of the field of accounting, only notes that most accounting jobs require a baccalaureate degree in accounting; however, this field is considered a specialty occupation.

Citizenship and Immigration Services (CIS) 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. In the instant petition, the proffered position is a general assignment reporter with primary responsibility for developing, researching, writing, and editing news articles. The petitioner describes no other collateral duties.

Two classifications in the *Handbook* overlap in describing the work and educational requirements for writers/reporters on a weekly newspaper. The *Handbook* classification of writers and editors on page 145 refers to jobs with small daily and weekly newspapers, trade publications, and radio and television broadcasting stations in small markets. With regard to the educational requirements for writers and editors, the *Handbook* on page 145 states the following: "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."

On page 137, another *Handbook* classification, namely, news analysts, reporters and correspondents, examines more specifically the job duties of news reporters. According to the *Handbook*, nearly 50 percent of employees in this classification work for newspapers, either large city dailies or suburban and small town dailies or weeklies, with the remaining individuals working in radio and television broadcasting, magazines and wire services. The *Handbook* states: "In covering a story, reporters investigate leads and news tips, look at documents, observe events at the scene, and interview people." The *Handbook* also states: "General assignment reporters write news, such as an accident, a political rally, the visit of a

celebrity, or a company going out of business, as assigned." With regard to training and education for this classification, the *Handbook* at page 137 states:

Most employers prefer individuals with a bachelor's degree in journalism and experience, but some hire graduates with other majors. They look for experience on school newspapers or broadcasting stations and internships with news organizations. Large city newspapers and stations also may prefer candidates with a degree in a subject-matter specialty such as economics, political science or business. Large newspapers and broadcasters also require a minimum of 3 to 5 years of experience as a reporter.

The *Handbook* clearly establishes that the job of news reporter does require a baccalaureate degree. What is less clear is whether the *Handbook* information establishes the regulatory criteria with regard to the baccalaureate degree being in a specific specialty. The writer/editor classification states that most employers of writers and editors prefer to hire people with degrees in communications, journalism, or English, while the news reporter classification indicates that most employers prefer individuals with a bachelor's degree in journalism and experience, although other graduates with other degrees are hired. The excerpts are not clear as to what other degrees are appropriate and whether they are closely related to a baccalaureate degree in journalism. The *Handbook* information, therefore, is inconclusive with regard to whether a baccalaureate degree in a specific specialty is required for entry into the news reporter position.

Factors often considered by CIS when determining the industry standard 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." *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 news reporter position were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner submitted affidavits from a professor of journalism, a chairman of a department of journalism, two editors of community newspapers, and the past president of an Illinois newspaper association. The letter from John Etheredge, past president and a current member of the board of the Northern Illinois Newspaper Association (NINA) describes the association as an organization of sixty-eight Northern Illinois newspapers and their staffs. Mr. Etheredge stated that based on his knowledge of the practices of the members of NINA, the industry standard for entry into the position of a staff reporter was a bachelor's degree

in journalism. The petitioner also submitted letters from Dan Haley, editor and publisher, *Wednesday Journal*, Oak Park, Illinois, and Jack Murray, editor of *The Reporter*, a weekly newspaper in the Chicago area. Mr. Haley, working in the printed news industry for 25 years and involved in the start-up of several community-based newspapers, stated that in the printed news industry, it is the standard that staff reporters have a bachelor's degree in journalism. Mr. Haley goes on to state that in his professional opinion, the newspaper industry requires at a minimum a bachelor's degree in journalism for the position of staff reporter. Mr. Murray stated that his best staff reporters have strong background in writing and analysis and this background is best evidenced by a bachelor's degree in Journalism. A letter from Ronald E. Yates, Chair, Department of Journalism, University of Illinois, and an award-winning journalist with the *Chicago Tribune* for twenty-seven years, stated that, in his professional opinion, the industry standard and the minimum educational requirement for the position of staff reporter was a bachelor's degree in journalism.

While the director is correct in noting that none of these letter writers provided documentary evidence, such as university diplomas of entry level staff reporters in similar newspapers, nevertheless, their advisory opinions, based on their long-term and continuing experience in the newspaper industry, are considered appropriate testimony in evaluating this criterion. In particular the letters of the two newspaper editors, active in the newspaper industry at a community level, and the letter written by Mr. Etheredge, an official with a regional newspaper association, provided significant probative weight in establishing the criterion outlined in *Shanti v. Reno*. Based on these letters, the petitioner has established an industry standard for the proffered position.

It should be noted that the petitioner also provided a detailed breakdown of the proffered position in its response to the director's second request for further evidence. This description outlined the numerous governmental bodies about which the beneficiary would be writing, the two towns that the beneficiary would be covering as a news reporter, the editorial standards to be followed, the number of articles to be written by the beneficiary on a weekly basis, and other research and writing duties that she would be performing. The levels of responsibility in the proffered position, along with the specialized nature of the reporting work to be performed by the beneficiary also contribute to establishing that the proffered position can be viewed as both specialized and complex. It does not appear excessive that the petitioner would require a baccalaureate in journalism or a closely related field for the proffered position.

The petitioner submitted documentary evidence that the beneficiary possessed a master's degree in journalism from the University of Illinois, Champaign-Urbana. As a graduate of an accredited U.S. institution of higher education, the beneficiary is qualified to perform the duties of the proffered position.

The petitioner has provided persuasive evidence to establish that the industry standard for a staff reporter position is a baccalaureate degree in journalism, and that the proffered position is both complex and specialized. Accordingly, it is concluded that the petitioner has 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 sustained that burden. The appeal will be sustained. The petition will be approved.

ORDER: The appeal is sustained. The petition is approved.