

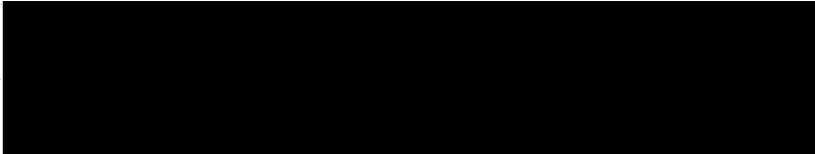
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**U.S. Department of Homeland Security
Citizenship and Immigration Services**

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



FILE: WAC-02-220-54351

OFFICE: CALIFORNIA SERVICE CENTER

DATE: DEC 24 2003

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:



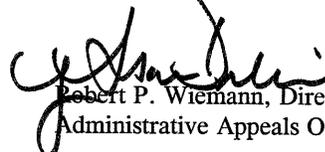
INSTRUCTIONS:

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 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 petition will be denied.

The petitioner is a shipping company that employs seven persons and has a gross annual income of \$3 million. It seeks to employ the beneficiary as a technical writer. The director denied the petition because the petitioner failed to establish that the offered petition qualified as a specialty occupation.

On appeal, counsel submits a brief and previously submitted evidence. Counsel states, in part, that the petitioner has established that the offered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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 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 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.

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's letter, dated June 19, 2002, described the beneficiary's duties as follows:

Develop, write, and edit transportation and freight forwarding technical material for preparing and designing catalogues and other promotional materials concerned with market research, promotional literature, expansion strategy, and training manuals for the operation and maintenance of transportation vehicles. Conduct interviews of personnel in the company and read publication[s] to obtain familiarity with the transportation industry. Study sketches and drawings to establish transportation schedules and sequences. Organize material and complete writing material according to set standards, regarding order, clarity, and technical terminology. Review other published material and recommend changes and revisions. Select photographs, sketches, and charts to illustrate material.

The letter stated that candidates must possess a bachelor's degree in English and have experience in freight forwarding and shipping. The letter further stated that the Department of Labor's *Dictionary of Occupational Titles (DOT)* shows the position as having an SPV of 8. The letter also stated that the beneficiary's duties are complex, and the skills necessary to perform the duties can be acquired only as part of a bachelor's degree; therefore, candidates must possess, at minimum, a bachelor's degree.

On July 8, 2002, the director issued a notice of intent to deny the petition. The director, reiterating the beneficiary's

duties, stated that the petitioner seeks candidates for a technical writer position. The director, citing the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*, delineated the *Handbook's* description of a technical writer. The director found the petitioner's job description vague, and requested a detailed description or sample of the writing, editing, and other material, that would be the beneficiary's responsibility.

The petition's letter, dated July 15, 2002, responded to the request. The petitioner stated that the job description must be viewed in the context of the nature of the company's business, a shipping company established in 1997. The petitioner stated that the shipping business is extremely competitive and that the industry has changed, lowering the profit margin. The petitioner stated that it promotes its business by targeting technology-oriented companies that transport machinery, and the petitioner claimed that it mails catalogues to the companies, explaining its services. The petitioner stated that it also advertises and mails brochures and correspondence to existing and potential customers. Moreover, the petitioner stated that it prepares and maintains technical manuals for the operation and maintenance of its fleet of vehicles.

The letter amplified the job description as follows:

Develop, write and edit transportation and freight forwarding technical material for preparing and designing catalogues and other promotional materials concerned with market research, promotional literature, expansion strategy, and training manuals for the operation and maintenance of transportation vehicles for the benefit of non-technical personnel. Prepare assembling information on technical machinery for technology-oriented companies to transport and assemble the machines at buyers' sites. Prepare catalogues on our technical services to target companies. Prepare technical manuals for operation and maintenance of our large fleet of vehicles. Conduct interviews of personnel in the company and read publication[s] to obtain familiarity with the transportation industry. Study sketches and drawings to establish transportation schedules and sequences. Organize material and complete writing material according to set standards, regarding order, clarity, and technical terminology. Review and edit other published material and recommend changes and revisions. Select photographs, sketches, and charts to illustrate material.

The petitioner submitted the following: (1) a company profile; (2) pages of its manual book, describing aspects of the shipment process; (3) a flier describing the aspects of the company, including insurance requirements; (4) promotional material; (5)

an advertisement in the Yellow Pages; and (6) pages from the Worldwide Service Guide.

On August 1, 2002, the director denied the petition, finding that the proffered position failed to qualify as a specialty occupation. The director stated that the beneficiary's duties do not demonstrate that the beneficiary will write technical material. The petitioner, the director further stated, has not submitted documents demonstrating the kind of material the beneficiary will write, and the kind of catalogues and promotional materials the beneficiary will be involved with. The director determined that the petitioner did not demonstrate that baccalaureate level training or higher is a normal requirement for entry into the occupation and that the submitted evidence did not indicate that the petitioner normally requires applicants for the position to possess baccalaureate or higher degrees in the field. Finally, the proposed duties and level of responsibility, the director stated, do not indicate complexity or authority exceeding the norm in the occupational field.

On appeal, counsel asserts that, in response to the director's request, the petitioner had submitted a detailed job description and supporting documents: the company profile, technical manual, promotional material, and other material, all of which shed light on the technical nature of the beneficiary's duties. The Immigration and Naturalization Service (the Service), now Citizenship and Immigration Service (CIS), counsel contends, denied the petition on the grounds that the petitioner submitted the same job description and the job description failed to demonstrate that the job involved technical writing, and that the petitioner did not submit any supporting documents to establish the type of material the beneficiary will write.

Counsel states that technical writer positions are specialty occupations and this statement, counsel maintains, is supported by the *DOT* and the *Handbook*. Counsel states that the Service has no evidence to suggest that the position does not involve technical writing, when the job duties closely parallel the job description, code 131.267.026, in the *DOT*. Counsel states that the company profile is evidence of the technical nature of the company's product.

Counsel contends that the Service ignored the amplified job description and supporting documents and appears to have a preconceived intent to deny the petition, regardless of the nature of rebuttal evidence. Counsel notes that the Service had approved the original H-1B petition based on identical evidence, and that the current petition is for an extension of the beneficiary's stay.

Counsel's statements on appeal are not persuasive. The petitioner failed to establish that the offered position qualifies as a

specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). First, counsel claims that the beneficiary's duties resemble those of technical writers. As such, counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the *DOT* (4th Ed., Rev. 1991). However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The 2002-2003 edition of the *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it a specific SVP rating in the *DOT*.

To determine whether a position qualifies as a specialty occupation, CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the 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 baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. Moreover, CIS also considers the nature of the petitioning entity's business operations in determining whether the offered position qualifies as a specialty occupation.

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 id.* at 387.

Counsel declares that the 2000-2001 edition of the *Handbook* reveals that the beneficiary's duties resemble those of technical writers. The *Handbook*, on page 146, states that technical writers develop scientific or technical materials, such as scientific and medical reports, equipment manuals, appendices, or operating and maintenance instructions, and that they also may assist in layout work. The *Handbook* further states that they put scientific and technical information into easily understandable language, and that they prepare scientific and technical reports, operating and maintenance manuals, catalogs, parts lists, assembly instructions, sales promotion materials and project proposals. Moreover, they plan and edit technical reports and oversee preparation of illustrations, photographs, diagrams, and charts.

As previously discussed, the 2002-2003 edition of the *Handbook*, is instructive in determining whether a position requires a baccalaureate or higher degree or its equivalent for entry into the occupation. The beneficiary's duties and the evidence contained in the record do not evince that the beneficiary's duties are performed by technical writers. For example, the subject matter of the documents that the beneficiary will be responsible for, is neither scientific nor technical in nature. Another example is the company profile: it is not derived from technical material, nor are the petitioner's advertisements, and promotional brochures. Furthermore, the subject matter of the manual, service guide, and catalogue are also not technical in nature, and are not derived from technical materials.

On page 27, the *Handbook* shows that many of the beneficiary's duties resemble those performed by advertising and promotions managers. For instance, advertising managers develop subject matter and the presentation of advertising; and promotions managers, in an effort to establish closer contract with purchasers, have promotions programs that may involve direct mail, telemarketing, catalogs, and Internet advertisements.

On page 28, the *Handbook* states the following with regard to training, advancement and other qualifications:

A wide range of educational backgrounds are suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

Specifically, for marketing, sales, and promotion manager positions the *Handbook* provides:

[S]ome employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous.

For advertising management positions, the *Handbook* states that some employer's prefer a bachelor's degree in advertising or journalism.

The *Handbook* reveals that employers find a wide range of educational backgrounds suitable for entry into the proffered position. Under the *Handbook*, for example, an employer may find that a person with experience in a related occupation and an associate or bachelor's degree in any field of study is suitable for an advertising or promotions manager position. Although some employers prefer a bachelor's or master's degree in business administration, for promotions manager positions, most do not normally require a bachelor's degree in a specialized field. Likewise, for advertising management positions, although some employers prefer a bachelor's degree in advertising or journalism, most do not normally require a bachelor's degree in a specialized field.

Thus, under the *Handbook*, the petitioner fails to satisfy the first criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) - that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The petitioner fails to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, the position is so complex or unique that it can be performed only by an individual with a degree. The record contains no evidence to show that: (1) the petitioner's degree requirement, a bachelor's degree in English, is common to the industry in parallel positions among similar organizations, and (2) the position is so complex or unique that it can be performed only by an individual with a degree. As the *Handbook* describes, advertising and promotions managers perform the duties of the offered position.

The third criterion requires the petitioner to establish that it normally requires a degree or its equivalent for the offered position. Counsel states that the petitioner presently employs the beneficiary in the offered position because the Service, now CIS, had approved the original H-1B petition based on identical evidence, and that the current petition requests an extension of the beneficiary's stay.

This record of proceeding does not, however, contain all of the supporting evidence submitted to the California Service Center in the prior case. In the absence of all of the corroborating

evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the original H-1B petition was approved in error. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior approval was granted in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding that is now before the AAO, however, the approval of the prior petition would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I. & N. Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

Finally, the fourth criterion requires the petitioner to establish that 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. As described in the *Handbook*, candidates do not require a bachelor's degree in a specific specialty to perform the duties of the offered position. Therefore, the petitioner fails to satisfy the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A).

In conclusion, the petitioner fails to show that the offered position qualifies as a specialty occupation by establishing at least one criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. The petition is denied.