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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



JUL 11 2003

File: WAC 02 144 53650

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:



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 is now before the Administrative Appeals Office ("AAO") on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a Spanish language television station with 45 employees and a gross annual income of \$7.2 million. It seeks to employ the beneficiary as a news editor for a period of three years. The director determined the petitioner had not shown that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), 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.

The director determined the petitioner had failed to show that a baccalaureate degree in a specific specialty is normally the minimum requirement for entry into the occupation.

On appeal, counsel asserts that the petitioner requires a bachelor's degree in communications for the position in question.

In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the position as follows:

In the role of news editor, [the beneficiary] is responsible for the daily production of our two daily live news telecasts. In this role, he supervises all technical employees, including sound, lighting, and cameramen, as well as the talent. The total number of employees that he supervises in this capacity is nine. He reads and edits all news items to ensure that slanderous, libelous, and profane statements are avoided or deleted. He maintains contact with the reporters on assignment during the day and oversees the production of the news and sports items prior to broadcast. Because ours is a relatively small station, [the beneficiary] performs duties normally performed by more than one person. For example, he also produces and reports the sports segment as well as makes reporting assignments for broadcast items.

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 proffered position appears to combine the duties of a writer or editor with those of a news writer. A review of the Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, at page 147 finds that most employers prefer to hire people with degrees in communications, journalism, or English. Similarly, a review of the *Handbook* at page 138 reveals that most employers prefer individuals with a bachelor's degree in journalism.

It is noted that not all editor or writer positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the duties are of such complexity as to require a baccalaureate degree in a specific specialty. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of 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. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The director's decision is withdrawn. The appeal is sustained and the petition is approved.