

D2

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

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC 02 048 54671 Office: VERMONT SERVICE CENTER Date: MAR 11 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

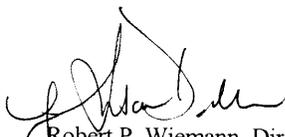
INSTRUCTIONS:

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 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, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a New Jersey technical publications and multimedia production company established in 1996 that has 10 employees and a gross annual income of \$300,000. It seeks to temporarily employ the beneficiary as an operations manager 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 position of operations manager is a specialty occupation due to the high degree of technical knowledge that is required to develop multimedia-training projects. Counsel also asserts that the beneficiary's baccalaureate degree is relevant to the petitioner's business.

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 Vermont Service Center on November 27, 2001, the petitioner explained the work it performed as follows:

[REDACTED] Inc. is an expert developer and producer of customized interactive multimedia training programs. The company's in-house team is comprised of professional instructional designers, animators, programmers, video specialists, engineers and creative technical writers. This comprehensive staff enables the company to take a project from start to finish and deliver a top quality package to the customer in a timely manner and at a minimum cost.

The Technical Writing and Translation divisions of [REDACTED] is ISO 9000 oriented specializing in the preparation and publication of high-quality technical documentation and training programs. The documentation covers aerospace, naval and automotive applications, electronics systems, computers, electro-optics, mechanics and other high-tech areas, including software documentation.

The petitioner described the proffered position as follows:

In this position, [the beneficiary] will visit customer's plant, prepare proposals; supervise the preparation of IDF glossary, translation of English into Hebrew language using glossary of text, transparencies, wall charts and VDO; oversee the preparation of interactive Visio software; technical manuals, publications and technical training of multimedia courseware. Produce camera-ready-copy of publications and software.

The petitioner added the following:

The position requires a bachelor's degree in film or television productions or its equivalent and three to

five years of experience. The position also requires fluency in the English and Hebrew languages and an ability to work individually and as part of a team and should have an analytical mind and a capacity for accuracy and details.

The petitioner also identified the beneficiary's previous work in the United States since October 1999 and the beneficiary's work in Israel from July 1993 to May 1999. The petitioner submitted an educational equivalency document that stated the beneficiary's bachelor's degree in film and television production was the equivalent of the same degree from a regionally accredited institution in the United States. The educational equivalency evaluator also found the petitioner's certificate with a specialty in electronics technology to be the equivalent of a United States high school diploma.

On December 3, 2001, the director asked for further information with regard to whether the proffered position was a specialty occupation. In particular, the director stated that the description of the proffered position was so general that it suggested the proffered position did not require the services of an individual with a bachelor's degree in a specific specialty. The director requested evidence that within the petitioner's company or within the multi-media production industry, a baccalaureate degree in a specific specialty was a standard minimum requirement for entry into the job. The director indicated that the petitioner could further document the petition by providing industry job postings with a description of duties and minimum educational requirements that were similar to the position offered to the beneficiary.

In response, the petitioner submitted two job search results from the website America's Job Bank. The petitioner also submitted the Department of Labor's (DOL) O*NET occupation profile for technical writer. Finally, the petitioner submitted the educational credentials and the resume of the individual presently working part-time as the petitioner's operations manager/multimedia productions.

The petitioner also provided the following expanded explanation of the duties of the proffered position:

Technical writers must be educated as electronic technicians or engineers, have mastered the English and Hebrew languages and be able to write in English and Hebrew. The materials that are prepared by the technical writers are technical manuals, operator manuals, and maintenance manuals as well as training programs such as instructor and trainee manuals; produce transparencies and world charts according to the specifications of the end user. . . They are interactive video manuals. . . The position being offered to the beneficiary, is that of Operations

Manager/Multimedia Productions. [The beneficiary] will be managing, supervising and directing the technical writers. Therefore he must be able to perform the above-mentioned duties in order to QA other employees.

On January 22, 2002, the director denied the petition. The director stated that although the Service agreed that the position of operations manager requires a bachelor's degree, it was not convinced that the proffered position required an individual with a bachelor's degree in a specific field or narrow range of disciplines. (Emphasis added.)

The director also noted that the petitioner did not appear to require a degree in a specific field or its equivalent for the position, since the present operations manager had degrees in engineering science and energy management. The director noted that the beneficiary in the instant petition has a bachelor of fine arts with a major in film and television.

On appeal, counsel asserts that the beneficiary's degree in television and film production is directly related to the making of the petitioner's interactive multi-media products, CD-ROMS, and videos featuring the products it manufactures. In addition counsel asserts that the beneficiary most recently worked on a variety of high profile Internet projects in the United States including the development of web pages for CBSHealthWatch.com, among others. Counsel further states that the beneficiary's area of expertise is the production of multimedia products, such as CD-ROMs and computerized media production. Finally, counsel asserts that the development of these highly specialized projects would not have been possible without the beneficiary's education, including his technician's diploma, and experience. Counsel also submits additional job announcements from the Society of Technical Communication website.

The Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau), 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.

Upon review of the record, the petitioner has identified two job titles with regard to the proffered position, namely, technical writer and operations manager/multimedia productions. In addition, the petitioner indicated that the beneficiary would also be working for a non-specified percentage of time with customers in identifying needs for services and preparing proposals for future projects. As such, the position also contains elements of a sales representative.

With regard to technical writers, the 2002-2003 edition of the *Handbook* on page 146 states the following:

Technical writers put scientific and technical information into easily understandable language. They prepare scientific and technical reports, operating and maintenance manuals, catalogs, parts lists, assembly instruction, sales promotion materials, and project proposals. They also plan and edit technical reports and oversee preparation of illustrations, photographs, diagrams and charts. . . . Many writers prepare materials directly for the Internet. . . . Also, they may write the text of Web sites. These writers should be knowledgeable about graphic design, page layout and desktop publishing.

With regard to training and other qualifications, the *Handbook* states:

Technical writing requires a degree in, or some knowledge about, a specialized field—engineering, business, or one of the sciences, for example. In many cases, people with good writing skills can learn specialized knowledge on the job. Some transfer from jobs as technicians, scientists, or engineers.

With regard to the classification of operations manager, the *Handbook* examines the position of operations manager, under the classification of top executives. On page 87, the *Handbook* states:

General and operations managers plan, direct, or coordinate the operations of companies or public and private sector organizations. The duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration.

With regard to training, and other qualifications, the *Handbook* states:

The formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts.

With regard to duties of sales representatives, on page 368, the *Handbook* states the following:

Sales representatives spend much of their time traveling to and visiting with prospective buyers and current clients. During a sales call, they discuss the client's needs and suggest how their merchandise or services can meet those needs. . . . Sales representatives may help install new equipment and train employees.

With regard to training and other qualifications for sales representatives, on page 369, the *Handbook* states:

The background needed for sales jobs varies by product line and market. Most firms require a strong educational background and increasingly prefer require a bachelor's degree as the job requirements have become more technical and analytical. Nevertheless, many employers still hire individuals with previous sales experience who do not have a college degree.

The duties of the proffered position as described by the petitioner do not appear analogous to the operations manager classification in the *Handbook* which implies the management of entire organizations as opposed to management of a specific project within a business. In addition, the proffered position does not appear analogous to the *Handbook* classification of technical writer since according to the petitioner, the beneficiary will not be performing the work of a technical writer, but supervising the work of technical writers. The work as described by the petitioner does appear similar to that of a technical editor. To the extent that the beneficiary would function as an editor of technical writers, by checking the accuracy of their work, the proffered position could be viewed as most analogous to a technical editor. However, the record contains no information on the percentage of time the beneficiary would be performing this function, as opposed to meeting with clients and negotiating contracts for new projects. Without such a determination, it is not possible to state that the primary function of the beneficiary would be as either technical editor or sales representative.

The proffered position appears to be an amalgam of a sales position along with the supervision of the technical writing and translation and multimedia production work of writers and other multi-media personnel. Although the classifications reviewed do require a bachelor's degree, at least two of the classifications accept multiple types of degrees, while the technical writer or editor position requires primarily a degree in an appropriate technical field. None of the classifications require a degree or its equivalent in the area of the beneficiary's education, namely, film or television production. Without more persuasive evidence, the petitioner has not established the first criterion of 8 C.F.R. § 214.2 (H) (4) (iii) (A).

With regard to the second criterion of 8 C.F.R. § 214.2 (h) (4) (iii) (A), 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 the proffered position were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner initially submitted two job search positions from a website, America's Job Search. One position description is for a technical writer, while the other describes a position for a project manager, publication team. According to these job vacancy descriptions, the technical writer position required a bachelor of arts degree with two years of full-time experience as a technical writer or in a closely related function. The project manager, publication team position required a bachelor of arts or science or an associate degree with five years project management experience. Neither of these job descriptions establish that a bachelor's degree in a specific specialty is common to the to the industry in parallel positions among similar organization. (Emphasis added.) On appeal, counsel submitted nine more job announcements, specifically in the technical communication field. Although some of these job announcements appear similar to the proffered position with an emphasis on CDROM preparation, and computer-aided writing and design, as a group, the educational requirements do not document that a degree in a specific specialty is common to the industry in parallel positions. For example, the position of Technical Writer/End-User Support Developer with Frederickson Communications, Inc., which requires software skills of Visio, has no educational requirement or qualification listed, while a technical writer position with a Contract Electronic Publishing Specialist which handles technical publications and manuals requires a minimum of two years of electronic publishing experience, with no degree requirement listed. While these job announcements document the need for extensive computer expertise and knowledge, they do not document any degrees in specific specialties that are required by the technical communication industry.

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. To date the petitioner has not provided sufficient testimony that addresses the uniqueness or complexity of the proffered position. This is due in part to the emphasis by the petitioner and the director on identifying the position as a technical writer, to which the proffered position does not appear to be analogous, as noted previously. No information has been placed on the record to demonstrate the complexity of any multi-media project that the beneficiary would manage, or the uniqueness of any production approaches, or the difficulty or complexity of translating materials from English to Hebrew.

With regard to the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, that the petitioner normally requires a degree or its equivalent for the position, the petitioner submitted the resume and educational credentials of [REDACTED] who was identified as the petitioner's part time project manager of multimedia productions. This individual has a bachelor of science degree in engineering, and a master of science degree in energy management from two United States universities. The beneficiary has a bachelor of arts degree in film and television from Tel Aviv University. While the petitioner can change the requirements of any position to meet its perceived needs, counsel's assertion that the beneficiary possesses the experience to place him within the realm of expertise that the position requires is not relevant to the establishment of this criterion. To date, the record does not reflect that the petitioner has required a degree in a specific specialty for the proffered position.

Without more persuasive evidence, it has not been established that the proffered position has duties that are any more demanding than those duties faced by the majority of project managers or sales representatives. The beneficiary will not perform the work of technical writers, but rather check the work of technical writers for "accuracy." With regard to the production of multi-media materials, the record is devoid of any further information as to the complexity or specialization of such work, or what exactly the beneficiary's responsibilities in the production of the interactive video manuals would be. Without more compelling testimony as to the nature of the multimedia production work done in the petitioner's business, 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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position. For example, the petitioner submitted documentation with regard to the beneficiary's high school and college diplomas. Counsel asserts that the beneficiary has "extensive experience in web development and multimedia products." He also asserts that the beneficiary "specialized in media production, particularly television studio programs, filmmaking and multimedia products" in his university studies. The beneficiary's college degree is a bachelor of arts in film and television production. Upon review of the university transcripts submitted by the petitioner, there is no evidence that the beneficiary specifically studied multi-media production. Coursework listed includes film and language, still photography, film directing, television studio production, and a 1 semester

hour course on electronic recording and editing. Counsel also makes numerous references to the beneficiary's technician diploma experience and refers to a "depo" level grading from the Israeli Army; however, the record is not clear as to what the depo level grading is or how the beneficiary's high school education would provide the equivalency of more specialized training in the field of multi-media production beyond his university studies.

Counsel is correct in his assertion that the beneficiary can establish his ability to perform the proffered position by means of a degree or its equivalent, which can consist of relevant education and work experience. However the evidence on the record with regard to the beneficiary's work experience is not sufficient to establish that the beneficiary has education or experience beyond his university studies that would establish his eligibility for the proffered position. For example, although the petitioner claimed in the original petition that the beneficiary had served as project manager/designer, scripts writer, for EduSelf Multimedia Publishers in Tel Aviv, Israel from July 1993 to March 1997, to date, the only substantive information item on the record with regard to the beneficiary's work experience in multi-media productions is contained in the petitioner's description of its multimedia coursework on biology, botany and agriculture. In this public internet document the beneficiary is identified as one of five educational designers, one of four programmers, and one of two persons doing audio/music effects on the project. Furthermore it is not clear from this documentation when this particular coursework was created and whether the coursework was created in the United States or in the beneficiary's previous work in Israel.

Although both the petitioner and counsel assert that the beneficiary has performed other work in multimedia productions in Israel other than EduSelf Multimedia Publishers, Inc., as well as computer website development in the United States, no documentation has been provided to substantiate these assertions. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). More substantive documentation would consist of letters from previous employers that describe in detail the type of work done by the beneficiary. Since the beneficiary appears to have been attending university studies at the time he was engaged in some of the claimed multi-media production employment in Israel, the periods and nature of this employment would have to be established. With regard to work performed in the United States, the petitioner would also have to establish the relevancy of the U.S. work, which appears to be primarily involved in the development of websites, to the duties and responsibilities of the proffered position. As the appeal will be dismissed on other grounds, this issue need not be examined further.

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.