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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



File: WAC 01 283 53868

Office: CALIFORNIA SERVICE CENTER

Date: MAY 19 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)

ON BEHALF OF PETITIONER:



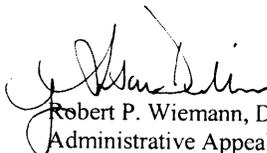
INSTRUCTIONS:

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 dismissed.

The petitioner is a company providing translation services in both emergency and non-emergency situations to tourists, business sectors, and various consulate employees requiring Japanese language services. The petitioner has 28 employees and a stated gross annual income of \$300,000. It seeks to employ the beneficiary as a copy editor, advertising program, for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional evidence.

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 denied the petition because the petitioner had not shown that a baccalaureate or higher degree in a specific

specialty or its equivalent is the normal, industry-wide minimum requirement for entry into the occupation.

On appeal, counsel asserts that the Bureau misinterpreted the Department of Labor's ("DOL") finding in the *Occupational Outlook Handbook (Handbook)* regarding the normal minimum requirement for employment as a copy editor. Counsel further asserts that the denial of this petition is inconsistent with the Bureau's prior approval of H-1B petitions filed by the petitioner on behalf of other beneficiaries.

When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Performing editors duties to re-write articles, to review, analyze and evaluate data collected for writing to promote our customers' business/service or sales of their products and to examine articles, tables, captions, and columns to be printed in news publications or other media publications for grammer [sic] and factual accuracy to ensure final form and accuracy of all published material prepared by translators and/or writers, utilizing knowledge and skills in English and Japanese to perform duties.

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 classify the offered position as a specialty occupation.

The proffered position parallels that of a copy editor or production assistant. The DOL describes the work of production assistants or copy editors at page 146 of the *Handbook*, 2002-2003 edition, as follows:

Many assistants, such as copy editors or *production assistants*, hold entry-level jobs. They review copy for errors in grammar, punctuation, and spelling, and check copy for readability, style, and agreement with editorial policy. They suggest revisions, such as changing words or rearranging sentences to improve clarity or accuracy. They also do research for writers and verify facts, dates, and statistics. Production assistants arrange page layouts of articles, photographs, and advertising; compose headlines; and prepare copy for printing.

According to the DOL at page 146 of the *Handbook*:

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. . . .

Counsel cites the following statement from the director's decision:

This information indicates that although a baccalaureate degree or higher degree or its equivalent is preferred, there is no normal, industry-wide **minimum requirement** for entry into the particular position. (Emphasis in original.)

Counsel contends that this statement represents a misinterpretation of the DOL's finding in the *Handbook*. The director's statement, while somewhat unclear, is not incorrect. The DOL states that a college degree is generally required for editor or copy reader positions, but goes on to indicate that a baccalaureate degree in a specific specialty is not normally the minimum requirement for entry into the occupation since some employers seek individuals with a broad liberal arts background for copy editor or publication assistant positions. In view of the foregoing, it is concluded the petitioner has not shown that a baccalaureate degree in a specific specialty is normally the minimum requirement for entry into the occupation.

The petitioner has not provided any evidence to show that the degree requirement is standard to the industry in parallel positions among similar organizations. Nor has the petitioner provided any evidence to show that it required a baccalaureate degree in a specific specialty as part of the hiring process for the proffered position.

Finally, the petitioner has not shown that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree in a specific specialty.

Counsel asserts that the Bureau has already determined that the proffered position is a specialty occupation since the Bureau has previously approved H-1B petitions filed by the petitioner on behalf of other beneficiaries. This record of proceeding does not, however, contain a copy of the previous petitions and all of their supporting documentation submitted to the California Service Center in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the AAO is unable to determine whether those petitions were approved in error.

Each petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the Bureau 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 approvals were granted in error, no such determination may be made without review of the original records in their entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence

contained in this record of proceeding, however, the approval of those petitions would have been erroneous. The Bureau 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 of Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither the Bureau 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).

The petitioner has failed to establish that any of the four factors 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.

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 will be dismissed.