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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

NOV 13 2003

FILE: EAC-01-143-52223

OFFICE: VERMONT 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)

IN BEHALF OF PETITIONER:

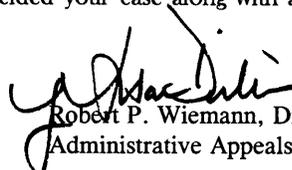
INSTRUCTIONS:

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, Vermont 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 grocery retail chain that employs 600 persons and has a gross annual income of \$12 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. Counsel states, in part, the petitioner has established that the offered position qualifies as a specialty occupation and the beneficiary is qualified to perform the duties of 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.

In the initial petition the duties of the offered position were described as follows:

- (1) To assist the New York Office in coordinating business operations with the joint venture partners in China and with the Representative Office in the Philippines;
- (2) To maintain a regular system of information exchange between the New York Office and the China/Asia staff;
- (3) To prepare regular consolidated reports for Top Management, including updates on projects and promotions, personnel movements, staff requirements, and performance ratings from each joint venture;
- (4) To prepare, review and update technical manuals for the standardization of business operations in Asia;
- (5) Whenever necessary, to update and supervise preparation of the Company's Private Placement Memorandum.

On June 17, 2001, the director requested additional documentation from the petitioner. Specifically, the director requested that the petitioner show it had sufficient work for the beneficiary in a specialty occupation, and provide a description of a typical workweek for the beneficiary, a detailed statement of the beneficiary's proposed duties as they relate to the petitioner, a description of the offered position's educational requirements, and an explanation of how the beneficiary's education relates to

the technical writer position.

In response, the petitioner provided the following description of the weekly duties of the offered position:

1. Editing all weekly and monthly qualitative and quantitative performance reports from the [g]eneral [m]anagers in Xiamen, Chengdu, Guangzhou and Beijing
2. Responding to inquiries from the Investment/Capital Market Division executives, usually Vice Presidents or Assistant Vice Presidents of prospective investors based in the United States but with Asian offices. . . .
3. Monitoring and reviewing revisions of legal drafts including documents relating to the purchase of chain stores and joint venture agreements and management contracts.
4. Responding to inquiries of existing investors regarding the general performance of the stores in each city.
5. In coordination with the Chief Financial Officer, attending to all requirements and inquiries of the company's external auditors during their quarterly and annual audits.
6. Handling annual revision of the company's Executive Summary and Financial Reports for distribution to existing and potential investors.
7. Drafting reports of [the] CEO/President based upon weekly and monthly reports, powerpoint presentation, and all materials for conference kits.

With respect to the weekly duties, the petitioner stated that, in general, the majority of the beneficiary's time will be spent on weekly reports. The petitioner also stated it had sufficient work for the beneficiary at the H-1B level and submitted the private placement memorandum to demonstrate the past, current, and expected business activities.

The petitioner stated that its company operated as the management arm of [REDACTED] (China) Ltd. pursuant to a Management Services Agreement. The petitioner stated that it had never petitioned for a beneficiary in the H-1B classification before, but that [REDACTED] (China) Ltd. had filed an H-1B petition for an operations research analyst. The petitioner explained the offered position is newly created, and its duties had been

performed by executives who now wish to concentrate their efforts on other matters. Last, the petitioner claimed that the offered position requires, at minimum, a bachelor's degree in business administration to perform the duties of drafting and revising business reports and documents, and communicating with the officers who represent the joint ventures as well as with executives who represent investors. These duties, the petitioner claimed, require an in-depth understanding of business that only an advanced education in the field can provide.

On November 29, 2001, the director denied the petition, finding it did not qualify as a specialty occupation. The director found that, because the offered position did not involve technical matters, it would not require a technical writer. The director stated that the duties of the offered position reflect those performed by clerical support personnel, and that the Department of Labor's *Occupation Outlook Handbook* (the *Handbook*) does not find that a bachelor's degree is a requirement to perform clerical functions. The director further stated that the petitioner indicated that no other persons are presently employed, or have been employed, in a similar position, and that the petitioner failed to establish an industry standard for a technical writer. Finally, the director stated that, had the offered position required a technical writer, the beneficiary would not be qualified for the position.

On appeal, counsel states that the offered position qualifies as a specialty occupation because of the complex nature of the job's duties. Counsel asserts that the offered position involves writing, editing, and revising business reports. Moreover, counsel states that the *Handbook* describes the duties of technical writers as putting technical information into easily understandable language and editing technical reports.

Furthermore, counsel avers that the beneficiary qualifies to perform the duties of the offered position. Counsel maintains that the *Handbook* states that the position of technical writer requires a degree in, or some knowledge about, a specialized field such as business. Thus, counsel asserts that the beneficiary's degree, which is a bachelor's in business administration, qualifies her for the offered position.

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).

To determine whether a position qualifies as a specialty occupation, Citizenship and Immigration Services (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.

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. On page 142, the *Handbook* shows that many of the duties of the petitioner's offered position, technical writer, resemble the duties performed by public relations specialists and secretaries and administrative assistants. For example, public relations specialists prepare annual reports, write, research, prepare materials, maintain contacts, and respond to inquiries. They inform the general public, interest groups, and stockholders of an organizations policies, activities, and accomplishments. They also keep management aware of concerns of the groups and organizations with which they deal.

The *Handbook* reveals that there are no defined standards for entry into a public relations career. A college degree combined with public relations experience, usually gained through an internship, is considered excellent preparation for public relations work. Many entry-level public relations specialists have a college major in public relations, journalism, advertising, or communications. Thus, the *Handbook* reports that a bachelor's degree in a specific specialty is not the minimum requirement for entry into the offered position.

On pages 422-423, the *Handbook* describes the duties of secretaries and administrative assistants as creating spreadsheets, composing correspondence, managing databases, and creating reports and documents. Executive secretaries and administrative assistants, the *Handbook* states, conduct research, and prepare statistical reports.

According to the *Handbook*, on page 423, high school graduates who have basic office skills may qualify for entry-level secretarial

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.

positions.

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 offered position's degree requirement, a bachelor's degree in business administrative, 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, public relations specialists and secretaries and administrative assistants 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. The record shows that the offered position is newly created; thus, the petitioner does not have a past practice of employing persons in the offered position.

Finally, the fourth criterion requires the petitioner 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.