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

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



File: SRC 02 175 50443 Office: TEXAS SERVICE CENTER

Date:

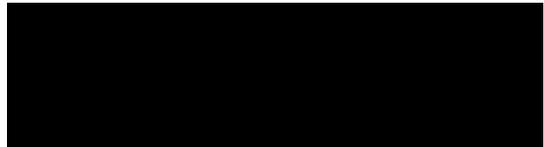
NOV 19 2003

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:



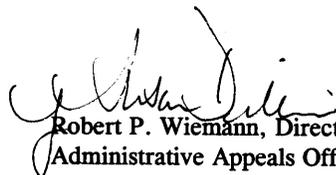
INSTRUCTIONS:

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

The petitioner is a software training and consulting firm with 15 employees and a gross annual income of \$3,900,000. It seeks to employ the beneficiary as a technical writer. The director determined that the petitioner had not shown that the proffered position of technical writer requires a bachelor's degree in a specific specialty.

On appeal, counsel submits a brief.

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 Immigration and Nationality Act (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 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.

In the initial petition, the job duties of the proffered position were described thusly:

Develop, write, and edit material for reports, manuals, instructions, briefs, proposals, and related technical publications in the information technology field. Interview production and engineering personnel and read journals, reports, and other material to become familiar with product technologies. Review software/hardware functions and other data relative to operation, maintenance, and service of systems. Study system specifications, mock ups, and product samples to integrate and delineate technology, operating procedure, and production sequence and detail. Organize material and complete writing assignment according to set standards regarding order, clarity, conciseness, style, and terminology. Review published materials and recommend revisions or changes in scope, format, content, and methods or reproduction and binding. Maintain records and files of work and revisions.

The initial petition also included the beneficiary's academic records.

The director found the evidence insufficient upon which to base a decision; thus, on May 25, 2002, he requested further evidence regarding the beneficiary's qualifications to perform the duties of a technical writer, and to demonstrate that the proffered position was a specialty occupation. In response, the petitioner submitted a letter from the beneficiary's previous employer, job postings from several companies, and a copy of the *Dictionary of Occupational Titles (DOT)* code for technical writer. The director found the evidence unpersuasive and denied the petition on July 22, 2002.

On appeal, counsel asserts that, because the petitioner requires a degree in English/Technical Writing and Internet job postings mention a degree requirement, and the position of technical writer carries a SVP rating of 8, the proffered position should be considered a specialty occupation.

Counsel states that the proffered position is a specialty occupation, in part, because it has been assigned a specific SVP rating in The Department of Labor's *Dictionary of Occupational Titles (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 Department of Labor's *Occupational Outlook Handbook (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, Citizenship and Immigration Services (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*.

Turning to the *Handbook* for guidance, it is found that the proposed job duties described above are comparable to those of a technical writer as described in the 2002-2003 edition at page 146. The *Handbook* states that a college degree is generally required for a position as a writer, and while some employers hire individuals with a liberal arts background, most prefer employees with degrees in communications, journalism, or English.

The *Handbook* notes that technical writing requires a degree in, or some knowledge about, a specialized field, such as one of the sciences. However, good writers can often learn the required specialized knowledge on the job. In other cases, technical personnel without an educational background in writing can become technical writers after developing their writing skills while still employed in technical positions. Inasmuch as the *Handbook* does not indicate that a bachelor's degree in a specific specialty is a requirement to become a technical writer, the proffered position is not a specialty occupation. The petitioner has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The job announcements on record do not specify that the bachelor's degree sought must be in a specific field. Also, the advertisers in the submitted announcements are not shown to be

similar in size or in nature to the petitioner. The petitioner has failed to establish that a bachelor's degree in a specific specialty is a requirement common to the industry in parallel positions among similar organizations. The petitioner has not placed on the record any evidence to the effect that its particular position is so complex or unique that it can be performed only by an individual with a degree. The evidence does not meet the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Regarding 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) and (4), the record does not contain documentation regarding the petitioner's educational requirements for other technical writers in its organization, nor is there any information on the record with regard to the specialized and complex nature of the proffered position. The job description in the original petition contains work duties that are similar to any technical writer position. The evidence does not meet either of these two criteria.

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.

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.