

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

Identifying data deleted to
prevent identity theft

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

OCT 27 2003

FILE: WAC-02-075-50394

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:

PUBLIC COPY

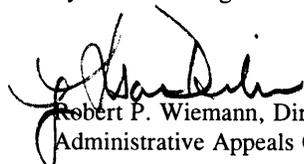
INSTRUCTIONS:

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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a newspaper that employs five persons and has a gross annual income of \$275,000. It seeks to employ the beneficiary as a newspaper editor. The director denied the petition because the beneficiary was not qualified to perform services in a specialty occupation.

On appeal, counsel submits a written statement and new evidence from the beneficiary's past employers and achievements in the field of journalism.

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. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires the theoretical and practical application of a body of highly specialized knowledge and 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 issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of

the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by Citizenship and Immigration Services (CIS) that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

In its initial nonimmigrant visa petition, the petitioner submitted a description of duties for the position as the following:

[F]ormulate editorial policy and direct operation[s] of the newspaper. He will confer with the editorial policy committee and heads of production, advertising, and circulation department to develop editorial and operating procedures and negotiate decisions affecting publication. He will also write leading or policy editorials and notify editorial department heads of the position to be taken on specific public issues. He will review financial reports and take appropriate action with respect to costs and revenues. He will also represent the publication at professional and community functions.

The petitioner required a bachelor of art degree in journalism, economics, business or its equivalent, as well as experience in and knowledge of newspaper publication procedures.

In its initial nonimmigrant visa petition, the petitioner also submitted copies of the beneficiary's credential evaluation and underlying diploma and transcripts. The credential evaluation submitted with the initial petition, written by Academic Credentials Evaluation Institute, Inc., a private credential evaluation company, assessed the beneficiary's academic credentials to be the equivalent of a bachelor of arts degree in economics. The beneficiary submitted a copy of his diploma and transcripts indicating attendance at three post-secondary schools over a five-year period resulting in the receipt of a bachelor of arts degree in economics from the Colegio de San Juan de Letran in the Philippines.

Subsequent to the filing of the petition, the director requested from the petitioner a detailed job description; the percentage of time to be spent on each duty; the beneficiary's level of responsibility and hours per week of work; the types of employees supervised; the minimum education, training, and experience necessary to do the job; and an explanation why the work requires an individual with a college degree or higher in the occupational field. The director also sought evidence that the beneficiary's credentials are in the field of newspaper editing or alternatively determined to be equivalent to the field through a combination of education, specialized training, and work experience.

In response to this request, the petitioner provided the following job description:

Formulate the editorial policy and direct the operation of the publication. He will be responsible for assigning projects to reporters, contributors, and photographers by conferring with the editorial policy committee and heads of production, advertising, and circulation. Further, he will attend and cover news conferences, conduct interviews, and write leading or policy editorials. [He] will further be responsible for determining the position to be taken on specific public issues, as well as edit articles submitted by reporters and contributors. He will also be responsible for determining the final layout of the pages, including photos and articles. In addition, [he] will review financial reports and take appropriate action with respect to costs and revenues. Finally, [he] will act as the publication's representatives at professional and community functions.

Additionally, the petitioner submitted a credential evaluation by a different credential evaluation service, the Global Education Group, Inc. (GEG), a private credential evaluation company. GEG determined the beneficiary's credentials to be the equivalent of a bachelor degree of science in communication with a major in journalism. GEG based its evaluation on the beneficiary's work history, curriculum vitae, personal affidavit, and letters issued by his past employers detailing his job responsibilities. Also submitted in response to the director's request for evidence was a sworn affidavit by the beneficiary detailing his past employment history.

The director denied the nonimmigrant visa petition because the beneficiary failed to prove he was qualified to perform services in a specialty occupation. The director specifically cited the beneficiary's failure to provide evidence to Citizenship and Immigration Services (CIS) from his past employers that supported GEG's credential evaluation.

On appeal, counsel produces five letters from the beneficiary's past employers, copies of awards received by the beneficiary in the field of journalism, and information concerning one of the organizations that gave the beneficiary the awards.

The Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, addresses the training and educational requirements for newspaper editor positions at page 147 as follows: "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." Since the

beneficiary's baccalaureate degree is in economics and not in the area of the specialty occupation, journalism, the director was correct in requesting evidence that would alternatively qualify the beneficiary through training or employment experience in the field of journalism under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The regulations at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) clearly state that only an official with authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience may provide a credential evaluation based on past employment experience. The credential evaluation provided by Global Education Group (GEG) does not fall under that criterion. GEG is a private business. The record does not contain a credential evaluation of the beneficiary's past employment experience by an official with authority to grant college-level credit for past employment experience. Thus, the GEG credential evaluation does not establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

However, under 8 C.F.R. § 214.2(h)(4)(iii)(5), CIS may make its own independent assessment of the beneficiary's credentials. The additional evidence provided on appeal is too laden with inconsistencies and insufficient details to determine that the beneficiary's past employment in the field of journalism could establish the beneficiary's eligibility to perform the services of a specialty occupation. The letters provided on appeal are from the following past employers: Philippine Journalists, Inc.; *Saipan Tribune*; KCNM-AM/KZMI-FM; the *Marianas Observer*; and *World Reporter*.

The letter from Philippine Journalists certifies that the beneficiary was employed there as a copy editor from July 1988. The letter is dated September 5, 1991 and does not certify the date the employment was terminated. In the beneficiary's sworn affidavit, the beneficiary claims that he worked for Philippine Journalists from July 1986 until August 1991. There is a two-year discrepancy with respect to the beneficiary's claimed employment experience with Philippine Journalists. Thus, the beneficiary's total accrued employment experience with Philippine Journalists may be three or five years. Additionally, the beneficiary's sworn affidavit states that he was a correspondent and staff writer for the *Times Journal*, a publication apparently under the Philippines Journalists business entity, which is inconsistent with the employer certification that he was employed as a copy editor. There is no explanation in the record for these inconsistencies.

The letter from the *Saipan Tribune* certifies that the beneficiary

was employed as a reporter with them from December 1991 through January 1994. However, the beneficiary's affidavit presents an inconsistent statement concerning his past employment experience. The beneficiary asserts that he was employed by the *Saipan Tribune* as a staff writer and acting editor-in-chief from October 1992 to November 1993. The beneficiary also asserts that he was employed by the *Saipan Tribune* as a staff writer from December 1991 through November 1992. The *Saipan Tribune*, however, did not clarify the different roles the beneficiary held during different time periods while the beneficiary was employed with them. Additionally, there is an inconsistency with the ending date of employment certified by the beneficiary's past employer and in the beneficiary's affidavit.

The letter from KCNM-AM/KZMI-FM is dated 1992 and is apparently an internal letter concerning the beneficiary's starting date of employment and responsibilities with them. The letter states that the beneficiary will be reading newscasts and commencing employment in September 1992. The beneficiary's affidavit, however, asserts that he was a news director for KCNM-KZMI AM/FM from October 1992 through October 1993. It is unclear from the KCNM-KZMI-FM letter that the beneficiary was employed as a news director for one year.

The letter from the *Marianas Observer* certifies that the beneficiary was employed at their weekly newspaper as an associate editor from December 1993 until January 1996. The beneficiary's affidavit, however, inconsistently asserts that his employment terminated in August 1996.

The letter from the *World Reporter* is dated May 8, 2002 and certifies that the beneficiary was employed as editor-in-chief of their weekly publication in Los Angeles, California from August 1996 to May 1997. The beneficiary's affidavit states the same. The record reflects that the beneficiary held H-1B nonimmigrant visa status while employed by Diaryo Pilipino (Brainstorms Publishing) in Los Angeles, California prior to filing the instant nonimmigrant visa petition to extend his nonimmigrant visa status for six additional months. The beneficiary's affidavit indicates that he was editor in chief of Diaryo Pilipino while employed there. However, the record does not contain evidence of the position's duties and responsibilities held by the beneficiary while employed for the Diaryo Pilipino or the *World Reporter*.

All of the beneficiary's employment experience letters provide the beneficiary's job title and some provide a time reference of the beneficiary's duration of employment with them; however, all of them do not provide any details concerning the duties, responsibilities, or supervisory role the beneficiary had while

employed with his past employers.

In addition to letters from past employers, the beneficiary provided evidence of receiving the following: Virgo Award in Journalism in 1999; the Best All-Around Excellence in Reporting 2nd Place award from the Society of Professional Journalists; Best Photography 2nd Place award from the Society of Professional Journalists; and Award of Achievement in Journalism for his "outstanding contribution in bringing the Filipino [illegible] into the new millenium in 2000" from Reflections XII held at the Omni Hotel in Los Angeles, California. The beneficiary also provided information concerning the Society of Professional Journalists, which is an organization "dedicated to the perpetuation of a free press as the cornerstone of our nation and our liberty." The Society of Professional Journalists' mission includes the following: promote the flow of information, maintain freedom of speech and press, stimulate high standards and ethical behavior among journalists, encourage diversity in journalism, and provide an association of journalists.

A search of the Internet provided no information about the Virgo Award. Internet search results led to a website apparently for the Filipino community in the United States but a subsequent link to the Virgo Award text on that website did not yield any information. A search of the Internet also provided no information about the Reflections XII award. The awards materials submitted on appeal provide biographical details about some of the beneficiary's past employment. The biographical details provided with the beneficiary's Virgo Award received in 1999 indicates that he began his writing career with the *Times Journal* in 1986 where he worked for five years. According to the beneficiary, the *Times Journal* is part of Philippine Journalists. While the biographical details state the same time period the beneficiary stated in his affidavit concerning his past employment with Philippines Journalists, there is no evidence in the record, however, concerning where the Virgo Award association obtained and verified its biographical information. Additionally, Reflections XII also recounts the beneficiary's biographical employment experience as presented in the beneficiary's sworn affidavit. However, there is no evidence in the record concerning where the Reflections XII association obtained and verified its biographical information.

In its independent assessment of the beneficiary's past employment experience for equivalency to the attainment of a baccalaureate or higher degree or its equivalent, CIS is guided by the regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(5)(i) through (v). The beneficiary must clearly demonstrate that his past employment experience included the theoretical and practical application of specialized knowledge required by the specialty

occupation and was gained while working with peers, supervisors, or subordinated who have a degree or its equivalent in the specialty occupation. (Emphasis added.) Additionally, the beneficiary must present evidence that he has recognized expertise in the specialty occupation.

The beneficiary has failed to meet his burden of proof under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) and its subsections. There are inconsistencies in the facts presented by the beneficiary and his past employers. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition to failing to prove work experience in areas related to the specialty, the beneficiary also fails to present conclusive evidence that he has recognized expertise in the specialty occupation. The AAO does not have enough information about the Virgo Award, Society of Professional Journalists, or Reflections XII associations who gave awards to the beneficiary to make a determination if they are "recognized authorities" as that term is used in 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(5)(i) or (v). A "recognized authority" for purposes of these regulatory provisions is defined at 8 C.F.R. § 214.2(h)(ii) as follows:

Recognized authority means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an opinion must state:

- (1) The writer's qualifications as an expert;
- (2) The writers' experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom;
- (3) How the conclusions were reached; and
- (4) The basis for the conclusions supported by copies or citations of any research material used.

The record does not contain any evidence that the award associations are recognized authorities under 8 C.F.R. § 214.2(h)(ii).

The beneficiary also provided information about his memberships in professional associations in his sworn affidavit which is a reference to eligibility at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(ii). He stated that he is a current member and Board Director of the Philippine National Press Club of America, an affiliate of the National Press Club in Washington, D.C. He also stated that he was a member of the Society of Professional Journalists from 1992 through 1996. The beneficiary also asserted that he was a member of the National Press Club of the Philippines and the Airport Press Corps in the past. However, the record does not contain any documentary evidence proving the beneficiary is a member of these associations. 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).

Thus, there is insufficient evidence that proves the beneficiary qualifies to perform the services of a specialty occupation through training or employment experience under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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.