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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

D2

[Redacted]

FILE: WAC 02 264 50428 Office: CALIFORNIA SERVICE CENTER Date: 5/15/04

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)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition 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 dental office. It seeks to employ the beneficiary as a technical writer, and to classify her as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional information stating that the proffered position is 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 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, 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:

- (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:

[A]n 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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceedings before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a technical writer. Evidence of the beneficiary’s duties was included with the I-129 petition, and in response to the director’s request for evidence. According to this evidence the beneficiary would: develop and maintain the dental office’s website and prepare write-ups on the history, dental services provided, plans available to patients, insurance, and position summaries of staff members (20 percent of the time); determine the content of the dental office’s quarterly newsletter for distribution to patients and staff members, as well as edit, design and copy fit the newspaper while working with graphic consultants to ensure and order accompanying art (15 percent of the time); translate technical information gathered from articles featured on Managed Dental Care into easy to understand English by writing clear, concise, and accurate summaries, and prepare brochures, press releases, patient education information and promotional materials for distribution to patients (25 percent of the time); research topics such as dental infection control, occupational disease agents, periodontal care, regulatory issues, and new technologies to be featured in newsletters (15 percent of the time); develop and update the employees’ manual, executive summaries and descriptions of management approach and structure, insurance policy features and accounting methods (10 percent of the time); draft correspondence to the American Dental Association, regulatory agencies, member dentists, and allied healthcare organizations and liaison with the dental research community to update the office on the latest products, procedures, and issues affecting the delivery of oral health care (10 percent of the time); and implement a system that will be available to other dentists at the termination of the beneficiary’s employment (5 percent of the time). The petitioner requires a minimum of a bachelor’s degree, or its equivalent, in business communications, English, or technical and business writing, or a related field, for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. Factors often considered by CIS when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Min. 1999) (quoting *Hird/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those of writers and editors. Specifically, the *Handbook* provides:

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 instructions, sales promotion materials, and project proposals. They also plan and edit technical reports and oversee preparation of illustrations, photographs, diagrams, and charts. *Science and medical writers* prepare a range of formal documents presenting detailed information on the physical or medical sciences. They impart research findings for scientific or medical professions, organize information for advertising or public relations needs, and interpret data and other information for a general readership.

According to the *Handbook*, a college degree is generally required for a position as a writer or editor. Some employers look for a broad liberal arts background, but most prefer to hire individuals with degrees in communications, journalism or English. Employers who specialize in a particular area, such as fashion, business, or legal issues, expect additional background in the chosen field. **Technical writing** requires a degree in, or some knowledge about, a specialized field, engineering, business, or one of the sciences, for example. (Emphasis added.) In many cases individuals with good writing skills can learn specialized knowledge on the job. Some technical writers transfer from jobs as technicians, scientists, or engineers. Others begin as research assistants, or trainees in a technical information department, develop technical communication skills, and then assume writing duties. It is, therefore, apparent that a degree in a specific specialty is not a minimum requirement for entry into the proffered position as technical writers may come from a variety of educational disciplines and then learn technical communication skills on the job. The petitioner has not satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion, the petitioner submitted statements from three dental offices which indicate that it is a common industry practice among dental offices to employ individuals with a bachelor's degree for technical writing positions. First, statements from three dental offices are insufficient in scope to establish an industry standard for the educational requirements of technical writers in the field. Second, the statements do not indicate the basis of the opinion by referencing any survey, study, or research material upon which the opinions are based. The opinions are, therefore, of little evidentiary value.

The petitioner has failed to establish that it normally requires a degree or its equivalent for the proffered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties of the offered position appear to be routine in the industry and require skills generally associated with the position. The duties are not so complex or unique that they can only be performed by an individual with a degree in a specific specialty. Nor are they so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner has failed to establish any of the abovementioned regulatory criteria for classifying the offered position as a specialty occupation. Accordingly, the director's decision will not be disturbed.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.