

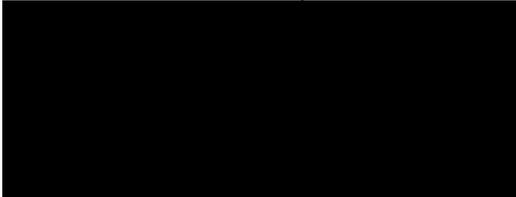
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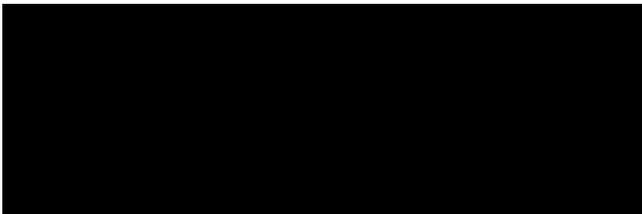
DEC 01 2004

FILE: WAC 04 071 50856 Office: CALIFORNIA SERVICE CENTER Date:

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:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition and certified his decision to the Administrative Appeals Office (AAO). The appeal is sustained. The petition is approved.

The petitioner provides Korean language radio broadcasting. It seeks to employ the beneficiary as a news reporter. The petitioner, therefore, endeavors to classify the beneficiary 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.

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.

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.

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 proceeding 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a news reporter. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail collecting newsworthy stories with particular emphasis on topics such as movie makers, styles of certain periods, genres, national cinemas, the history and criticism of television and movies, and developments in new technologies; examining a film's form, style, and narrative; analyzing the contribution of contemporary critical theory on film and media, the techniques and history of animation with emphasis on the major styles and methods of production, and the relationship of Chinese and Japanese cinema to Korean-American culture and society; analyzing how studio domination has influenced American cinema, the nation's ethos, trends in film and its form and content, methods of studio production, star values, and censorship; analyzing and condensing information from news sources and determining what has news value; organizing materials and deciding what satisfies the required length, style, and format; defining problems, establishing facts, and drawing conclusions; reporting news; selecting and researching topics, contacts, and interview sources; maintaining notes and tapes; writing and editing reports and participating in the creative cycle of a story; producing voice reports for the air; maintaining contact lists and files; and establishing rapport with an audience. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in film studies or a related field.

The director concluded that the proffered position was not a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the qualifications of news analysts, reporters, and correspondents in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the *Handbook* shows that although a baccalaureate-level degree is preferred, the occupations do not require a baccalaureate-level degree in a specific specialty as the normal industry-wide minimum requirement for entry into the occupations. The director stated that no evidence demonstrated that a degree in a specific concentration is common to the petitioner's industry, Korean language radio broadcasting, in parallel positions among similar organizations or that an industry-related professional association made a bachelor's degree a requirement for entry into the field. According to the director, the petitioner submitted no letters or affidavits from firms or individuals in the industry attesting that such businesses routinely employ and recruit only degreed individuals. The director found the beneficiary's duties generic in nature, providing no detail about the uniqueness or complexity of the position, and counsel's assertion that the position was complex and unique unsupported by documentary evidence. Although the petitioner claimed that it required a person with a bachelor's or higher degree in film and media or related field subjects, the director found this unpersuasive given that the proffered position did not require the theoretical and practical application of a body of highly specialized knowledge, the requirement of a specialty occupation. Nor did the director find the beneficiary's duties so specialized and complex that the knowledge required to perform the duties would be associated with the attainment of a baccalaureate or higher degree in a specific specialty. Finally, the director cited several court decisions that indicated CIS's authority to deny the instant petition even though CIS had previously approved an H-1B petition on the beneficiary's behalf.

In the appeal brief, counsel states that the petitioner acquired the business of Radio Korea on the AM1230 band in Los Angeles, and that the beneficiary held an approved H-1B petition with Radio Korea for the same position as described in the instant petition. Counsel states that the director refused to examine the prior petition for material error. Referring to the April 23, 2004 memorandum from the Associate Director of Operations, counsel states that the director was required to examine the prior petition that had been approved on the beneficiary's behalf. Counsel maintains that although the director claimed to be limited to reviewing the information contained in the immediate record of proceeding, CIS has authority to obtain out-of-record evidence that can be included in the evidentiary record under 8 C.F.R. § 103.2(b)(18). Counsel states that the director erroneously disregarded the information in the *Handbook*. Counsel maintains that the *Handbook* does not use the same terms as CIS, and that there is a recognized difference of terminology between "immigration speak" and "labor speak." Counsel states that the DOL regards the terms "prefer" and "require" as synonymous. Counsel claims that the current edition of the *Handbook* states that a bachelor's degree in engineering is required for almost all entry-level engineering jobs, whereas the 1988-89 edition of the *Handbook* states that a bachelor's degree from an accredited engineering program is "generally acceptable for beginning engineer jobs." Counsel claims that the change in the *Handbook's* language "was not an expression of increased requirements over the years." According to counsel, the decision in *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988), translated "labor speak" into "immigration speak," finding the language "generally acceptable" to mean a "requirement." Counsel asserts that the commissioner "held that words other than "require[.]" [as] used by the Department of Labor, can be considered to be "requirements" in the immigration context." Counsel states that the positions of news analysts, reporters, and correspondents do require a specific baccalaureate degree, and notes that the *Handbook* describes the occupations of writers and editors as related to a reporter. Counsel narrates two passages in the *Handbook* about the educational requirement of a writer or editor, and states that the *Handbook's* "requirement" of degrees in "communications, journalism or English" in one passage is indicated as what employers "prefer" in a different passage. This demonstrates, counsel contends, that the DOL considers the term "prefer" and "require" as synonymous. Counsel states that the expert opinion letter from [REDACTED] of Seattle University, establishes the normal requirements in the industry.

In the supplemental appeal brief, counsel states that the outcome of two similar petitions are dependent upon the petition in the instant proceeding, and counsel briefly narrates the history of the two cases. According to counsel, the petitioner filed new H-1B petitions for beneficiaries who held approved H-1B petitions with Radio Korea U.S.A., Inc. Counsel states that the petitioner filed the new petitions, even though there was no material change in the beneficiary's employment or with the petitioning entity, because of a change in the company's ownership, and maintains that the terms of employment, job description, and salary for the positions remained the same. Referring to the April 23, 2004 memorandum from the Associate Director of Operations, counsel states that the director was required to examine the prior petition that had been approved on the beneficiary's behalf. Counsel stresses that the memorandum stated that, except for material error, changed circumstances, or new material information which must be clearly articulated in the resulting request for evidence or decision denying the benefit sought, a prior determination by an adjudicator that an alien is eligible for the particular nonimmigrant classification sought should be given deference. Counsel claims that the denials in the three petitions did not articulate the material error, changed circumstances, or new material information as the basis for denying the case. Counsel states that the only new fact in the instant petition is a

change in ownership, which is not a material error, a change in circumstance, or new material information. Counsel contends that the director did not give case-by-case consideration of the three separate H-1B petitions. Counsel states that the petitioner submitted evidence from the *Handbook* that indicated that a news reporter is a specialty occupation. Counsel contends that the *Handbook* states:

[M]ost employers prefer individuals with a bachelor's degree in journalism or mass communications. . . . Large-city newspapers and stations also may prefer candidates with a degree in a subject-matter specialty such as economics, political science, or business.

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Even though the fourth criterion has been established, this decision will address the statements of counsel set forth in the two briefs.

Counsel states that CIS has authority to obtain out-of-record evidence about the beneficiary's prior H-1B petition under 8 C.F.R. § 103.2(b)(18). The regulation at 8 C.F.R. § 103.2(b)(18) involves withholding adjudication of a visa petition or other application because of a pending investigation. It does not authorize CIS to obtain out-of-record evidence.

The April 23, 2004 memorandum from the Associate Director of Operations stated that when adjudicating a request for an extension of a nonimmigrant petition involving the same parties (petitioner and beneficiary), and the same underlying facts, a prior determination by an adjudicator that the alien is eligible for the particular nonimmigrant classification sought should be given deference. However, a case where a prior approval of the petition need not be given deference occurs when the adjudicator is able to clearly articulate a material error, a substantial change in circumstances, or new material information in a request for evidence or a decision denying a benefit. The memorandum states that CIS has the authority to question prior determinations; that adjudicators are not bound to approve subsequent petitions or applications seeking immigration benefits where eligibility has not been demonstrated, merely because of a prior approval which may have been erroneous. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988); and that each matter must be decided according to the evidence of record on a case-by-case basis. See 8 C.F.R. § 103.8(d).

Counsel claims that the only new fact in the instant petition is a change in ownership, which is not a material error, a change in circumstance, or new material information. Counsel's claim is not persuasive given that the director found a material error with regard to the previous petition approval. The memorandum defines a material error as the misapplication of an objective statutory or regulatory requirement to the facts at hand. While it would have been better had the director explicitly declared that he found a material error with the previous petition approval, the director nonetheless articulated the basis for the instant petition's denial: that the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular

position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's 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/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

According to counsel, the director correctly determined that the proffered position falls under the classification of news analysts, reporters, and correspondents as described in the *Handbook*. A review of the *Handbook* discloses that the duties of the proffered position resemble those performed by a reporter who primarily covers newsworthy stories with a particular emphasis on topics such as movie makers, national cinemas, and the history and criticism of television and movies.

Counsel contends that although the director acknowledged the qualifications sought by employers for these positions, he inexplicably ignored the *Handbook's* information by concluding that such positions do not require a specific degree. Counsel's contention is weak given that the *Handbook* supports the director's conclusion. The *Handbook* states:

Most employers prefer individuals with a bachelor's degree in journalism or mass communications, but some hire graduates with other majors. They look for experience on school newspapers or broadcasting stations and internships with news organizations. Large-city newspapers and stations also may prefer candidates with a degree in a subject-matter specialty such as economics, political science, or business.

Furthermore, the *Handbook* states "[e]mployers report that practical experience is the most important part of education and training" for jobs as news analysts, reporters, and correspondents.

The *Handbook* reveals that employers do not require a baccalaureate degree in a specific specialty for a job as a reporter. According to the *Handbook*, employers *prefer* - but do not require - a baccalaureate degree in a specific specialty such as journalism or mass communications; large-city newspapers and stations prefer, but do not require - a baccalaureate degree in a subject-matter specialty. As already stated, section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), states that a specialty occupation must require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. Thus, the director correctly concluded that a news analyst, reporter, or correspondent would not require a baccalaureate-level

degree in a specific specialty. The petitioner, therefore, fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Counsel claims that the current edition of the *Handbook* states that a bachelor's degree in engineering is required for almost all entry-level engineering jobs, and that the 1988-89 edition of the *Handbook* states that a bachelor's degree from an accredited engineering program is "generally acceptable for beginning engineer jobs." Counsel opines that the change in the *Handbook's* language "was not an expression of increased requirements over the years." However, counsel submits no independent evidence that would support his opinion. 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).

Counsel declares that the *Handbook* describes writers and editors as related occupations to the proffered position, and that a college degree in a specific field is a normal requirement for entry into these occupations. Counsel states that the *Handbook* begins with the following "significant point":

Most jobs in this occupation require a college degree in communications, journalism or English, although a degree in a technical subject may be useful for technical-writing positions. [Emphasis added].

Counsel states "[t]his point is a summary of the paragraph on the following page":

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. For those who specialize in a particular area, such as fashion, business, or legal issues, additional background [in] the chosen field is expected.

According to counsel, a comparison of the two passages evinces that the DOL considers the terms "prefer" and "require" as synonymous.

Counsel's statement is not convincing; he offers no documentary evidence in support of his statement. Furthermore, the AAO cannot locate in the 2004-2005 edition of the *Handbook* the first passage quoted by counsel. The statements of counsel on appeal are not evidence and thus are not entitled to any evidentiary weight. See *INS vs. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Counsel states that the *Handbook* describes the occupations of writers and editors as related to a reporter. While it is true that some of the beneficiary's proposed duties overlap with those of a writer, the *Handbook* does not indicate that employers require a bachelor's degree in a specific specialty for either a reporter or writer. In this decision, we have already discussed that the *Handbook* shows that a reporter does not require a bachelor's degree in a specific specialty. The educational qualifications of a writer, depicted in counsel's second passage, explains that most employers merely *prefer*, but do not require, a baccalaureate degree in a specific specialty

such as communications, journalism, or English. Consequently, the petitioner fails to establish a baccalaureate or its equivalent in a specific specialty is normally the minimum requirement for entry into the particular position.

No evidence in the record demonstrates that the DOL or CIS consider the terms “prefer” and “require” as synonymous. The reference to the regulation at 20 C.F.R. § 656.21(b)(2)(iv), which relates to the labor certification process, to illustrate that the DOL interprets the terms “prefer” and “require” as synonymous is not persuasive. The regulation at 20 C.F.R. § 656.21(b)(2)(iv) states:

If the job opportunity has been or is being described with an employer preference, the employer preference shall be deemed to be a job requirement for purposes of this paragraph (b)(2).

The above passage indicates that an employer preference is deemed a job requirement solely for the purpose of the paragraph at (b)(2) of 20 C.F.R. § 656.21 which relates specifically to the labor certification process. Consequently, the passage does not apply to 8 C.F.R. § 214.2(h)(4)(iii)(A) and the above cited provision of the Act which relate to whether a position qualifies as a specialty occupation.

Another of counsel’s assertions is that the decision in *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988), translated “labor speak” into “immigration speak,” and that the commissioner “held that words other than “require”[,] [as] used by the Department of Labor, can be considered to be “requirements” in the immigration context.” Counsel points to the following passage in *Matter of Sea, Inc.* to support his assertions:

The Occupational Outlook Handbook (1988-89) indicates on page 52 that a bachelor’s degree in engineering is a realistic prerequisite for engineering positions. . . . Accordingly, it is concluded that the position offered the beneficiary is . . . one which normally requires at least a baccalaureate-level degree in electrical engineering. [Reference to “professional” as having been replaced by “specialty occupation.”]

Counsel’s assertions are not persuasive. Counsel does not explain the vague terms “labor speak” and “immigration speak,” and how the court translated “labor speak” into “immigration speak.” No documentary evidence is submitted that would support counsel’s statement that the commissioner held that words besides “require” “can be considered to be requirements in the immigration context.” Further, in the passage quoted above, counsel omitted a key sentence: that Congress specifically listed the occupation of engineers as within the professions. The complete quotation in the decision stated:

The *Occupational Outlook Handbook*, 1988-89 Edition indicates on page 52 that a bachelor's degree in engineering is a realistic prerequisite for engineering positions. Furthermore, as noted previously, when Congress defined the term "profession" by example in section 101(a)(32) of the Act, it specifically listed engineers as within the professions. Accordingly, it is concluded the position offered the beneficiary is a professional one which normally

requires at least a baccalaureate-level degree in electrical engineering.

The AAO points out, contrary to counsel's claim, that the statement "engineering is a realistic prerequisite for engineering positions" is easily distinguishable from the educational requirements of reporters and writers as described in the *Handbook*. The *Handbook* reports that most employers *prefer* individuals with bachelor's degrees in communications, journalism, or English for writer positions, and for reporter positions most employers *prefer* individuals with a bachelor's degree in journalism or mass communications. According to the 1981 edition of the *American Heritage Dictionary of the English Language*, the terms "prerequisite" and "prefer" are different. The definition of the term "prerequisite" is "required as a prior condition to something," and its synonym is the term "necessary." Whereas the definition of the term "prefer" is "like better" or "value more highly." As we have already discussed, section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), states that a specialty occupation must *require* the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. Accordingly, the petitioner cannot demonstrate that the term "prefer," is synonymous with the terms "prerequisite," and "require."

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to the expert opinion letter from [REDACTED] Ph.D. of Seattle University. [REDACTED] letter stated "radio stations require reporters to have a minimum of a baccalaureate degree," and that "[t]he standard credential for journalism and media positions is a baccalaureate degree in journalism or communications, or in mass media. But these degrees are not the only appropriate ones." The letter continued:

Second, is the preferred baccalaureate degree sometimes a more specialized degree such as degrees in art, film, political science, or some other more focused field? Here the answer is an unequivocal yes. . . . Hence it is very common for media outlets to look for individuals who have training in specific fields such as health, politics, foreign affairs, sports, theatre, film, consumer affairs, social phenomena, science, business or religion, as well as many others.

Finally, Dr. Trzyna stated:

My conclusion therefore is that a baccalaureate degree is required for a reporting position at [the petitioning entity] and that [the petitioning entity] is following standard industry practice by hiring individuals who have specialized degrees in various areas of reporting such as the arts, film, politics, and public affairs, to name only a few.

Dr. Trzyna's letter is relevant. Nevertheless, it is insufficient to establish that the petitioner's industry requires a baccalaureate degree in a specific specialty for the proffered position, reporter, given that Dr. Trzyna submits no independent documentary evidence to corroborate his statements. 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). Accordingly, the probative value of the letter is diminished.

Although the petitioner's June 18, 2004 letter stated that ethnic media companies in the Los Angeles area hire and need many news reporters with specialized knowledge in subjects such as business, technology, political science, international relations, education, media, public policy, and ethics, the petitioner submitted no independent evidence that would corroborate this statement or would establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Again, the *Handbook* reveals that employers do not require a bachelor's degree in a specific specialty for a reporter or writer position.

There is insufficient evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent in a specific specialty for the proffered position. The petitioner's June 18, 2004 letter indicated that it has filed H-1B petitions for seven individuals to occupy news reporter positions. However, the evidentiary record does not establish whether the duties of these positions are similar to the proffered position or whether they have the same educational requirement. Furthermore, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. 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, nonprofessional, 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 petitioner's June 18, 2004 letter described the beneficiary as spending about 65 percent of his time in research and analysis, 25 percent in writing and reporting, and 10 percent in miscellaneous duties. According to the letter, the beneficiary would work as a reporter in the entertainment and media section, a department designed to help listeners understand the audio-visual language of modern media and new technologies, and to view them from socioeconomic, political, aesthetic, and historical perspectives. Based on the job description, some of the beneficiary's research and analysis duties entail collecting newsworthy stories with particular emphasis on topics such as styles of certain periods, genres, national cinemas, the history and

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.

criticism of television and movies, and developments in new technologies; examining a film's form, style, and narrative; analyzing the contribution of contemporary critical theory on film and media, and the relationship of Chinese and Japanese cinema to Korean-American culture and society; and analyzing the influence of studio domination over American cinema, the nation's ethos, trends in film and its form and content, methods of studio production, and censorship. Some of the writing and reporting duties are described as condensing information from news sources and determining what has news value and writing and editing reports and participating in the creative cycle of a story.

The beneficiary's research and analysis duties require understanding socioeconomic, political, aesthetic, and historical perspectives of the cinema. The knowledge to perform the duties of the proffered position is usually associated with the attainment of a baccalaureate or higher degree in film studies or a related field.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The AAO notes that the beneficiary is qualified to perform the duties of the proffered position: he holds a bachelor of arts degree with a major in film studies from the University of California at Santa Barbara.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.