

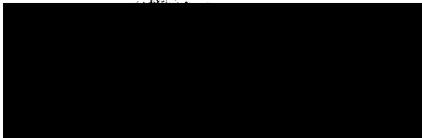
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U.S. Department of Homeland Security

Citizenship and Immigration Services

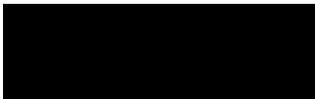
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, N.W.
Washington, DC 20536



File: WAC 01 290 53409 Office: CALIFORNIA SERVICE CENTER Date:

JAN 20 2004

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:

SELF-REPRESENTED

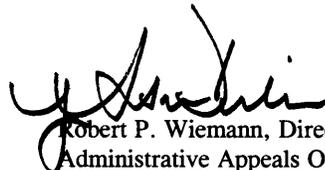
INSTRUCTIONS:

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 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 web-based business that markets, distributes, and sells woven labels, printed labels, and other apparel accessories through the Internet. It seeks to employ the beneficiary as an Internet Web technical writer. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a) (15) (H) (i) (b).

The director denied the petition on the petitioner's failure to establish that (1) the proffered position is a specialty occupation, and (2) beneficiary has the qualifications necessary to serve in a specialty occupation. The AAO will only discuss the specialty occupation issue, as its decision that the proffered position is not a specialty occupation issue is dispositive of the appeal.

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.

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.

It is important to note that 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) the 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 and the accompanying December 26, 2001 letter, with enclosures, from the petitioner's manager. The AAO reviewed the record in its entirety before issuing its decision.

The director found that the proffered position met none of the qualifying criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner asserts that, contrary to the director's understanding, it is seeking not a Webmaster, but a person who can keep the content of one of its Websites current and interesting by virtue of writing ability and knowledge of the culture of the Philippines. According to the petitioner, the particular Website is directed at Filipinos. Also on appeal, the petitioner refers the AAO to the employment agreement between the petitioner and the beneficiary as showing that the petitioner's real intent was for an effective writer with special knowledge about the culture of the Philippines.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The critical factor in the AAO's decision was the record's depiction of the proposed duties.

Paragraph B of the employment agreement speaks of the beneficiary's providing updated technical content to the website, and also speaks of the beneficiary's "[p]roviding fresh news and stories and to make [sic] it more interactive by providing streaming videos, animation, news, chat rooms, and message boards."

The Form I-129 listed the proffered position as "Web technical writer" and, as a nontechnical description of the job, stated, "Provide technical content to our websites." This form also described the proposed duties as follows: "Will update the technical content of our websites on a daily basis. Provide news, stories, and develop streaming videos, animations to our websites."

The reply to the RFE introduced as a job description a two-page, Tex Labels document with the heading "Web Technical Writer." This document specifies the need for a bachelor's degree or equivalent training and "2+ years experience in writing or [a] related field." The most defining aspects of the proffered position as portrayed in this document appear to be: researching and writing articles for the Internet on the fashion industry, the petitioner's products, and cultural issues; editing web pages; creating website logos, designs, and pictures; application of video editing and production knowledge; and monitoring and analyzing website traffic.

The RFE reply also included a copy of the petitioner's newspaper advertisement for the proffered position, which bears the heading "Technical Writer/Web Developer." It presents, in very general terms, a spectrum of requirements that include, but are not limited to, outstanding English writing abilities, technical writing and online formatting skills, and familiarity with a number of computer applications. There is no mention of a degree requirement.

Another RFE submission is a one-page document that is identified as the proffered position's job posting. Entitled "Technical Writer/Web Developer," this document specifies a minimum of "2+ professional years experience in technical writing or equivalent education," cites a "BA or BS degree" as "a plus, and generally comports with the information in the newspaper advertisement.

In analyzing the evidence, the AAO first applies the criteria at 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1) and (2): a baccalaureate or higher degree or its equivalent that is the normal minimum requirement for entry into the particular position; a degree requirement that is common to the industry in parallel positions among similar organizations; or a particular position that is so complex or unique that it can be performed only by an individual with a degree.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Here the AAO consulted the 2002-2003 edition of the *Handbook* in making the following findings. The evidence does not support the "technical writer" title of the proffered position. Not

surprisingly, the *Handbook* indicates that the main focus of the technical writing occupation is putting scientific and technical information into easily understandable language. The evidence does, however, substantially comport with the *Handbook's* description of non-technical writers who prepare work directly for the Internet and write the text of Web sites.¹ The *Handbook* indicates that such writers "should be familiar with interactive technologies of the Web so they can blend text, graphics, and sound together." The *Handbook* also indicates that the proffered position's requirement for knowledge of computer applications is compatible with non-technical writing positions in today's marketplace.

The *Handbook's* treatment of the writer occupation indicates that employers for positions such as the one proffered here generally require a college degree, but generally do not require that the degree be in a specific specialty. As the evidence of record does not rebut the *Handbook's* information, the proffered position does not meet the 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) criterion's requirement for a bachelor's degree or higher, or the equivalent, in a specific specialty.

Next, the AAO weighed the evidence to see if the proffered position qualifies as a specialty occupation by way of the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) for a bachelor's or higher degree requirement that is common in the proffered position's industry in positions that are parallel to the proffered one in organizations similar to the petitioner.

Factors often considered by CIS when determining this criterion 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)).

As our earlier discussion indicated, for writing positions such as the one at issue here, the only common degree requirement that the *Handbook* reports is a college degree without any specified academic major. This does not suffice. As mentioned earlier in this decision, whenever used in the specialty occupation

¹ The AAO recognized the technological dimensions generally described in job-related documents submitted by the petitioner, but they are not so substantial as to comport with any technological occupation for which the *Handbook* reports a baccalaureate or higher requirement in a specific specialty.

criteria, "degree" means not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The other firms' "Tech Writer/Network Engineer/Web Developer" and "Technical Writer/Web Developer" advertisements submitted by the petitioner have little evidentiary value. Their general job descriptions indicate that they are for positions that are not parallel to the proffered position or in organizations similar to the petitioner. Furthermore, the advertisements are too few to establish a hiring practice common to an entire industry.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position.

The AAO also found that the evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), that is, as one that is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. On the basis of the record, it appears that the proffered position is no more unique or complex than Website non-technical writing positions in general, which do not usually require a baccalaureate or higher degree in any specific specialty.

The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - the employer normally requires a degree or its equivalent for the position. The petitioner presented no evidence on this issue.

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. While the duties described in the record involve some technical aspects, such as computer applications, video production, graphic design, and Web design elements, they do not involve any type of knowledge that is so highly specialized or complex as to be usually associated with a baccalaureate or higher degree in any specific specialty. Therefore, the evidence does not establish

that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary's qualifications.

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.