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FILE: WAC 03 008 52661 Office: CALIFORNIA SERVICE CENTER Date: JUN 2 2004

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.

6 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 provides software development, consulting, and project management services to the general public. It seeks to employ the beneficiary as a technical writer, and to classify him 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, and because the beneficiary does not qualify to perform the duties of a specialty occupation. On appeal, the petitioner submits a brief stating that the proffered position is a specialty occupation, and that the beneficiary qualifies to perform the duties of a specialty occupation.

The first 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 Immigration and Nationality Act (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 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:

[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: coordinate and handle all aspects of documentation for assigned projects including interfacing with the development team and familiarizing with technologies and development methodologies and cycles (9 per cent of the time); organize material, develop accurate and high quality user documentation using original content, edit and/or re-purpose technical and business content, and complete writing assignments in an orderly, clear, concise and persuasive style, using terminology with the audience in mind (30 per cent of the time); use proper indexing techniques, develop reference manuals, user guides, context sensitive online Windows/Java/HTML help systems, efficient and effective process and API documentation, online manuals, marketing brochures and additional materials (36 per cent of the time); work with end-users, product marketing and technical teams to gather information, develop documentation plans, prepare drafts for review, generate feedback, and incorporate changes to publish the final outputs in a variety of formats and media (15 per cent of the time); make recommendations to management regarding estimates, schedules, issues, and changes to documentation as appropriate (8 per cent of the time); and basic administration (2 per cent of the time). The petitioner indicates that a bachelor’s degree in communications, journalism, English, or a related field is the minimum requirement for entry into the offered 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 five job advertisements for technical writers. The number of advertisements submitted is insufficient in scope, however, to establish an industry standard. Furthermore, two of the advertisements indicate that a bachelor's degree is required for the advertised positions, but the degree need not be in any particular specialty. The remaining three advertisements require degrees in any of the following disciplines: English; communications; technical writing; journalism; linguistics; history; computer science; science; and engineering. Rather than support the petitioner's assertion that a degree in a specific specialty is common to the industry in parallel positions among similar organizations, the advertisements indicate that a degree in any number of unrelated disciplines will suffice.

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 in this regard.

The final issue to be determined is whether the beneficiary qualifies 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 the Service 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.

The petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted experiential evaluations from ██████████, an evaluator with the Foundation for International Services, Inc., and ██████████, Associate Professor of English and Professional Writing with Purdue University. ██████████ states that the beneficiary holds the equivalent of a bachelor's degree in technical writing from an accredited college or university in the United States based upon his past education and work experience. The record does not reflect, however, that ██████████ is 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. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Her evaluation is, therefore, of little evidentiary value in this regard. ██████████ opines that the beneficiary holds the equivalent of a Bachelor of Arts degree in English, with a concentration in technical writing, based upon his past education and work experience. ██████████ states in his evaluation that he has the authority to evaluate foreign educational credits, experience, training, and/or courses taken at other United States or international universities to determine whether credit will be awarded to a student by Purdue University. Dr. ██████████ statement alone, however, is insufficient to establish this authority. The authority may be established by an independent statement from a university official having administrative authority to comment on ██████████ authority to award such credit. As such, the opinion of ██████████ is of little evidentiary value. Neither evaluation establishes the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(C)(4).

CIS may itself determine whether the beneficiary is qualified to perform the duties of a specialty occupation. That determination may be made pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which provides:

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. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. . . . 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.

The documentation recounting the beneficiary's work experience is insufficient in detail to determine that: the work experience included the theoretical and practical application of specialized knowledge; the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in a specialty occupation; and that the beneficiary has recognition of expertise in a specialty. CIS cannot, therefore, determine that the beneficiary is qualified to perform the duties of a specialty occupation. The evidence presented does not indicate that the beneficiary holds the equivalent of a United States baccalaureate level education in any educational discipline. For this additional reason, the petition may not be approved.

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.