



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: WAC 02 274 52045 Office: CALIFORNIA SERVICE CENTER Date: *07/11/2009*

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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invasion of personal privacy

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. 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 hair restoration and transplant business that seeks to employ the beneficiary as a copywriter for an advertising campaign directed at a Japanese-speaking market. 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 he determined that the proffered position, which he described as a translator, is not a specialty occupation. On appeal, counsel states that the position is that of an advertising copywriter, and refers to job classifications in Department of Labor publications. Counsel submits no further documentation.

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 petitioner's letter of support; (3) the director's request for additional evidence, dated September 18, 2002; (4) counsel's letter that responds to the director's request, dated November 1, 2002; (5) the director's denial

letter; and (6) 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 an advertising copywriter. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support, dated August 30, 2002; and counsel's letter in response to the director's request for further evidence. According to the job description submitted by the petitioner, the beneficiary's primary duty would involve assisting in the development and promotion of a marketing and advertising campaign directed at current or potential Japanese customers. The petitioner indicated that this primary duty would include research into information sources on local Japanese and overseas markets, and the writing and editing of promotional literature, such as photos, logos, and illustrations, to supplement written materials. The petitioner indicated that the position required writing and speaking skills in both Japanese and English. The petitioner also stated that knowledge of English medical terminology would be an essential part in writing the marketing/advertising copy. The petitioner indicated that the candidate for the position could possess a baccalaureate degree in English and American literature.

The director found that the proffered position was not a specialty occupation as it could not be determined that the duties of the proffered position are those of a technical copywriter. The director referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and stated that the position was analogous to a translator position. He further stated that the *Handbook* indicated no need for a baccalaureate degree in a specific specialty for a translator, especially when the translating duties were not specifically involved in a technical field. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the petitioner had stated job functions that distinguished the proffered position from a translator position. Counsel describes the petitioner as having four branch offices, with 72 employees. Counsel further states that the petitioner has not yet established an advertising program for its newly planned Japanese market, and that, based on a new marketing program directed at Japanese customers whose English is limited, the petitioner's need for an advertising copywriter is self evident. Counsel further states that, prior to the denial of the petition, the service center had not addressed the issue of whether the position was a translator. Counsel refers to the job duties outlined in the U.S. Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)* and the *Handbook* for translators, and outlines the differences in job duties between a technical translator and a copywriter. Counsel also refers to prior AAO decisions on cases involving H-1B eligible translators/interpreters/technical writers, as found in the *H-1B Handbook*.<sup>1</sup> Counsel states that these positions are distinguished from simple translator jobs, based on the need to translate technical terms. Counsel also refers to the *Handbook's* reports on writer-editor positions that state such positions require a bachelor's degree in liberal arts, journalism, or English.

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.

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<sup>1</sup> Fragomen, Jr., Austin and Bell, Steven C., *Immigration Law Library, H-1B Handbook, 2002 Edition*, Section 6:19.

The AAO turns first to 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The record is not clear as to why the director identified the proffered position as a translator position. The primary duty of the position is developing and writing materials for an advertising campaign directed at a Japanese-speaking market. As such, the proffered position appears to be a combination of an advertising copywriter, with some responsibilities for translating and advertising planning. The major duties of the position appear to be analogous to an entry-level copywriter or technical writer. The *Handbook* states the following about technical writers:

*Technical writers* put technical information into easily understandable language. They prepare operating and maintenance manuals, catalogs, parts lists, assembly instructions, sales promotion materials, and project proposals. Many technical writers work with engineers on technical subject matters to prepare written interpretations of engineering and design specifications and other information for a general readership. They plan and edit technical materials and oversee the preparation of illustrations, photographs, diagrams, and charts.

With regard to copywriters or editors, the *Handbook* states:

Editors and program directors often have assistants, many of whom hold entry-level jobs. These assistants, such as copy editors and *production assistants*, review copy for errors in grammar, punctuation, and spelling and check the copy for readability, style, and agreement with editorial policy. They suggest revisions, such as changing words and rearranging sentences, to improve clarity or accuracy. They also carry out research for writers and verify facts, dates, and statistics.

Without more specific information, such as the type of advertising media, including brochures or advertisements, presently utilized by the petitioner; the specifics of the planned marketing program for a Japanese-speaking clientele; or the extent of any medical terminology in any proposed marketing literature, the record is not sufficient to establish that the proffered position is at the level of a more advanced technical translator or writer/editor. The record presently contains only a three-page brochure that explains the work done by the petitioner and identifies members of the petitioner's medical practice. Although this brochure does contain phrases specific to the petitioner's medical practice, this document, by itself, does not establish that the proffered position is a technical writer or translator position at the level of a specialty occupation.

In addition, with regard to academic credentials, the *Handbook* states:

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. Knowledge of a second language is helpful for some positions.

Thus, while the *Handbook* states that most employers prefer to hire copywriters in three specific areas, it also indicates that a broad liberal arts background could suffice for positions within the field. To the extent that the proffered position appears to be an entry level position with unspecified copywriting and translating duties, a broad liberal arts background could suffice for entry into the position. As previously stated, 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.

With regard to parallel positions in similar businesses, the petitioner submitted no further documentation. 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 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 record is devoid of any information on the number of employees presently utilized by the petitioner in any copywriting or marketing activities. The petitioner submitted no documentation with regard to previous or current copywriters in its employ and their academic credentials. Thus, the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 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 of the position appear generic. On appeal, counsel refers to other more advanced translator/interpreter/technical writer positions listed in the *H-IB Handbook* that the AAO had previously approved; however, these positions do not appear analogous to the more generic writing and translating duties outlined by the petitioner. The petitioner provided no further detail as to any specialized or complex duties that the beneficiary would perform as a copywriter for a marketing campaign directed at Japanese-speaking clientele. As previously noted, the record is devoid of any information on the proposed advertising campaign, and/or any proposed advertising or medical literature that would require any specialized or complex copywriting or technical translating duties. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the position, if it had been determined that the position was a specialty occupation. The petitioner submitted an educational equivalency document from Education Evaluators International, Inc., Los Alamitos,

California. This document stated that the beneficiary had the equivalent of a baccalaureate degree in English and American Literature from an accredited U.S. college or university based on her university studies in Japan. However, the transcript for the beneficiary's university studies indicates only one course in communications, and none in areas such as advertising, media, technical translation, or other fields related to the duties of the proffered position. In addition, the beneficiary's certificate from Orange Coast College in medical assisting-administrative/clinical is not viewed as necessarily providing the beneficiary with any expertise in medical translations. For this additional reason, the petition may not be approved.

Beyond the decision of the director, this petition may not be approved because the LCA was not timely certified. 8 C.F.R. 214.2 (h)(4)(i)(B)(1) states: "Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed." In addition, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp. Inc.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

In response to the director's request, the petitioner submitted an LCA that was certified on September 11, 2002. CIS received the I-129 petition on September 9, 2002. The LCA submitted by the petitioner was not certified prior to the filing of the instant petition. Thus, the record establishes that the petitioner did not obtain a certified LCA prior to filing the instant petition.

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.