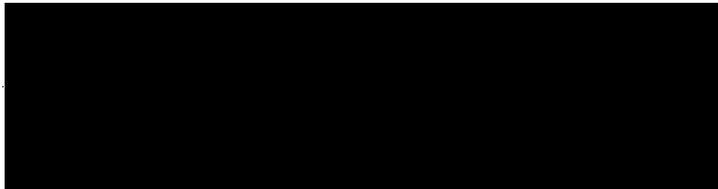




U.S. Citizenship  
and Immigration  
Services

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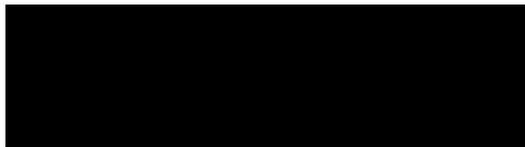


FILE: EAC 04 032 54179 Office: VERMONT SERVICE CENTER Date: SEP 01 2004

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
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**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 food importer and distributor that seeks to employ the beneficiary as a technical writer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 statement and previously submitted evidence.

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 technical writer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 11, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would

perform duties that entail: preparing, drafting, reporting, and translating into Japanese the government-required documentation pertaining to the petitioner's import, export, and distribution of food products from Asia; writing, drafting, and revising from Japanese into English the technical corporate information from Japanese companies, agencies, and governmental authorities for the petitioner, U.S. government regulators, and counsel; writing and editing proposals and other reports; preparing the Japanese edition of the petitioner's manuals, briefs, catalogues, and related documents; and producing the petitioner's Japanese language promotional pamphlets and brochures. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in English or an equivalent thereof.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a baccalaureate degree in a specific specialty. 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, in part, that the petitioner has provided sufficient documentation to demonstrate that the proffered position requires a baccalaureate degree in the area of education, such as the newspaper advertisement that was used in recruiting for the proffered position. Counsel also states that the record contains letters from two similar businesses and evidence of their technical writers' educational backgrounds. Counsel further states that the record contains evidence of the educational backgrounds of the petitioner's other employees to demonstrate that it has a history of hiring employees with at least a bachelor's degree in the area of education.

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 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 Department of Labor's *Occupational Outlook Handbook (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 AAO does not concur with counsel that the proffered position is a technical writer. Page 274 of the *Handbook*, 2004-2005 edition, describes the duties of a technical writer as follows: "Technical writers develop technical materials, such as equipment manuals, appendices, or operating and maintenance instructions." The petitioner's January 21, 2004 letter indicates that the beneficiary would be primarily drafting business documents such as business reports, agreements, and "memorandum" of business meetings. Such duties do not entail the level of responsibility of a technical writer.

In its January 21, 2004 letter, the petitioner cites published decisions such as *Matter of Desai*, 17 I&N Dec. 569 (BIA 1980), and also cites the North American Free Trade Agreement (NAFTA) in support of its claim that the

proffered position is a specialty occupation. Unlike the beneficiary in the present case, however, the beneficiary in *Matter of Desai* possessed the equivalent of a bachelor of science degree in mechanical engineering in addition to a degree in journalism. In this published decision, the findings of a professional technical writing organization, the Society for Technical Communication, located in Washington D.C. were noted as follows:

The most usual educational preparation for a career in technical writing is a bachelor's degree from an accredited college or university, with emphasis on both writing and science."

It is noted that the findings of the professional technical writing organization are corroborated by the statements of three editors of various professional technical magazines and journals, as well as by the director of the Technical Communications program at the University of Minnesota. Thus, even if the AAO were to conclude that the precedent decision was analogous to the present case, it cannot not be concluded that the proffered position is a specialty occupation, as the petitioner does not require a bachelor's degree with an emphasis on both writing and science. The petitioner's additional assertion that the proffered position is one of the professions listed in 8 C.F.R. § 214.6(c) under NAFTA is noted. Such regulations, however, relate to the temporary employment of Canadian and Mexican citizens and not to the specialty occupations provided for in § 101(a)(15)(H)(i)(b) of the Act.

Regarding parallel positions in the petitioner's industry, the record contains two letters from two similar businesses. Both writers state that they employ a technical writer, and provide evidence of their baccalaureate degrees. The writers, however, have not provided a comprehensive description of the duties of their technical writer positions. Thus, it cannot be determined that the positions are similar to the proffered position, and the letters have little relevance. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, the text of the letters is identical. Thus, the AAO must question whether the opinions expressed in each letter are the views of each author.

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. On appeal, counsel states that the record contains evidence that the petitioner has a longstanding history and pattern of hiring employees with at least a bachelor's degree in the area of education. The record, however, does not contain any evidence of the petitioner's past hiring practices of a technical writer position and therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California, id.*

Furthermore, CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation, regardless of the petitioner's past hiring practices. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> 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.<sup>1</sup> In this regard, the petitioner fails to establish that the technical writer position it is offering to the beneficiary entails the theoretical and practical application of a body of highly specialized knowledge.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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. 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 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.

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<sup>1</sup> 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.