

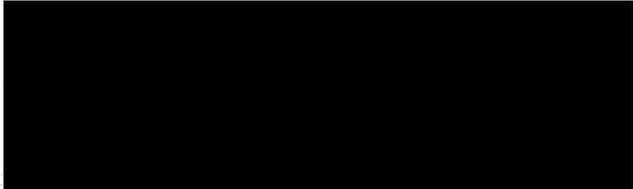
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



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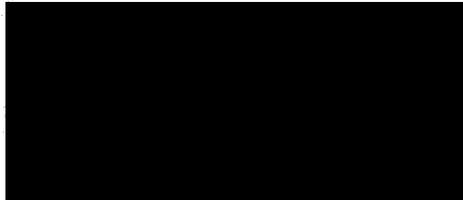
Date: **SEP 02 2004**

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:



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 service center 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 weekly newspaper on matters of interest to the Irish community on the East coast. In order to employ the petitioner as a newspaper reporter, the petitioner 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 on two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

The director determined that the petitioner had not established that the proffered position qualified as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). In his discussion, the director noted that the information about the news analyst, reporter, and correspondent occupations in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) "shows that positions as reporters do not necessarily qualify as specialty occupations, requiring a minimum of a bachelor's degree in a specific field of study directly related to the occupation, although employers may establish that a position as a reporter for their organization qualifies as a specialty occupation based on the duties of the particular position." The director also remarked that the *Handbook* "does not support a finding that a baccalaureate or higher degree or its equivalent is normally the requirement for entry into the position." The director further stated that the petitioner did not provide documentary evidence to establish that [it] required current or former employees in similar positions to hold a minimum of a baccalaureate degree in a specific field of study," and that the petitioner stated, in counsel's response to the director's request for additional evidence (RFE), that it "prefer[s], rather than require[s], candidates with majors in journalism." The director also stated that the petitioner had not established "that the nature of the duties of the particular position is so specialized and complex that the knowledge usually attained through a baccalaureate degree in a related field is required to perform them."

On appeal, counsel cites a Board of Immigration Appeals (BIA) decision, *Matter of Perez*, 12 I&N Dec. 701 (BIA 1968), as establishing that a newspaper reporter position is a specialty occupation. As "other supporting cases," counsel cites two decisions by the AAO.¹ As discussed below, the decisions cited by counsel are not persuasive, and the evidence of record does not overcome the director's decision on the specialty occupation issue.

The determination that the proffered position is not a specialty occupation within the meaning of the Act and its implementing provisions at 8 C.F.R. § 214.2(h)(4)(iii)(A) is based on the AAO's consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documents

¹ The two AAO decisions have not been designated and published as precedent decisions, and have no precedential weight. See 8 C.F.R. § 103.3(c).

filed with it; (2) the director's RFE; (3) the letter and documents that counsel submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief.

The duties and performance requirements, and not the job title, of the proffered position determine whether a position may be classified as a specialty occupation. Accordingly, the AAO considered all the evidence in the record of proceeding about the position, including: the Form I-129; the letter of support that the petitioner's president submitted with the Form I-129; the page from the DOL Employment and Training Administration Online Wage Library (ETAOWL); the pages from the Internet version of the petitioner's newspaper; the copy of the April 7, 2003 print version of the petitioner's newspaper; counsel's letter of reply to the RFE; the section on news analysts, reporters, and correspondents from the 2000-2001 edition of the *Handbook*; and counsel's brief on appeal.

The petitioner indicated that it is a weekly newspaper that features local news from Ireland, financial information, opinion columns, entertainment news, sports scores, classifieds, arts and leisure. The Internet version of the newspaper originated in 1987, as an Internet newsletter. The print version has been published since 1994 and, at the time the petition was filed, had a weekly run of 20,000 copies, which are distributed mainly through Irish bars and restaurants. Counsel's letter of reply to the RFE (at page 3) describes the petitioner as "a small ethnic newspaper with emphasis on Irish related news, including Irish sports." Here counsel also stated that the petitioner currently had "8 full time employees, and several part time and freelanced reporters/writers." Counsel's letter identified only three employees – the founder and publisher, a news editor/reporter, and a sports editor/reporter. While the letter related that the news editor/reporter had "a B.S. in journalism," the only credentials it stated for the current sports editor/reporter were:

15 years of experience in news reporting. Worked extensively in U.S. and Ireland.

Counsel's brief expands the information about the current sports editor/reporter's background as follows:

High School Diploma
1986-1990 Reporter,
Irish Independence [sic], Dublin,
Ireland

1994-1996 Radio Sports
Reporter, WUNR, Boston
Massachusetts, USA

1990-present, freelance
Sports Reporter, Irish Independence [sic],
Dublin Ireland

On appeal, counsel repeats the description of the proposed duties which was first presented in his letter of reply to the RFE:

Job Duties of Proffered Position

- report and write stories for our Irish Sports column;
- attend various sporting events covered by [the petitioner], [REDACTED] games [REDACTED] English Soccer and Golf in Ireland;
- observe events at the scene, and interview people, i.e., players, coaches, fans, and other sports personalities;
- take photographs of sports events during the games/and/or players;
- interpret news and/or offer opinions to readers;
- interpret and organize information and determine the focus of the report;
- write and edit stories and edit accompanying photographs;
- may collect and analyze facts about Irish related newsworthy events other than Irish sports by interview, investigation, or observation; and
- other assignments as required.

In the letter of support filed with the Form I-129, the petitioner's president described the educational requirements of the proffered position as follows:

The minimum educational requirement of this Newspaper Reporter position is a Bachelor's Degree in Journalism, Irish Studies, or a closely related field. Extensive knowledge in Gaelic games & Irish cultures preferred.

Counsel's letter of reply to the RFE stated the educational requirement in this manner:

Please note that [the petitioner] is a small ethnic newspaper with emphasis on Irish related news, including Irish sports. Candidate with a major in journalism is preferred but not required. Candidate with experience in school newspaper or related fields is important. . . .

Counsel's letter responding to the RFE also stated:

Beneficiary will spend approximately 30% to 40% of his time attending various events, tak[ing] photographs and conduct[ing] interviews. The remaining time will be spent in [the] office writing, editing, and organizing the stories and prepar[ing] the same for publishing. [Boldfaced and underlined in the original.]

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as one 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] requires *theoretical and practical application of a body of highly specialized knowledge* in fields 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 [2] 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." (Italics added.)

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a position must meet one of the following criteria in order to qualify as a specialty occupation:

- (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) has consistently interpreted 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. Applying this standard, CIS regularly approves

H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

Counsel cites *Matter of Perez*, 12 I&N Dec. 701, a 1968 decision in which the BIA determined that journalism is a profession, stating in part, "it is apparent that a baccalaureate degree is now the accepted education requirement for entry into the field of journalism, and consequently that occupation, meeting the high educational level of other professions, likewise qualifies as a professional occupation." *Id.*, at 701. However, the BIA was not using the term "professional occupation" as synonymous with "specialty occupation." Rather, the BIA was referring to the term "profession" as it "was defined in section 101(a)(32) of the Act as including but not limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary schools, colleges, academies, or seminaries."² *Id.*, at 701. In fact, Congress did not enact the specialty occupation provision and the H-1B nonimmigrant classification to which it relates until 1990, more than 20 years after *Matter of Perez*.

We note further that, although the definition of "profession" remains part of the Act at section 101(a)(32), the "specialty occupation" definition which Congress enacted at section 214(i)(1) of the Act contains no mention of "profession" and makes no reference to section 101(a)(32). In short, "specialty occupation" has a different meaning than "profession" and "professional occupation" under the Act. Thus, *Matter of Perez* is not controlling in this case.

Counsel cites AAO decision number WAC 99 189 52207, an unpublished, non-precedent decision, to support his contention that "[i]t is apparent that [CIS] has not been using a rigid standard in determining whether a proffered position is a specialty occupation." Counsel does not explain, and it is not self-evident, how he arrived at the conclusion that this particular AAO decision reflects the application of an ambiguous standard. It appears that, in reversing the director's decision that the proffered junior art director position was not a specialty occupation, the AAO applied the correct statutory and regulatory standard, namely, that, to qualify as a specialty occupation, a position must require at least a baccalaureate degree in a specific specialty required for performance of the duties of the proffered position. In any event, despite the possibility that an adjudicator or a service center director may render a good faith but erroneous decision in a particular proceeding, the AAO treats each petition as a separate proceeding with a separate record (*See* 8 C.F.R. § 103.8(d)), and in making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The AAO is never bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Furthermore, as remarked at footnote 1 above, the AAO is bound to follow only AAO decisions that CIS has designated and published as precedent decisions, and counsel cites none.

² The BIA issued its decision in the context of a third-preference immigrant-classification status (then, but no longer, at section 203(a)(3) of the Act) for aliens "who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States."

Counsel cites a second AAO decision, LIN 99 045 52892, also an unpublished, non-precedent decision, to support his argument that “[i]n the instant case, the director erred in concluding [that a] reporter is not a specialty occupation based on the fact that some newspapers will hire reporters with majors other than journalism.” The AAO does not agree with counsel’s assessment. The facts in the cited decision are distinctly different from those in this case. Furthermore, the AAO decision only serves to highlight the necessity for an H-1B petitioner to demonstrate that its proffered position requires a degree in a specific specialty that embodies highly specialized knowledge necessary for job performance. The AAO found that a programmer analyst position was a specialty occupation because it required one of three bachelor’s degrees: computer science, information science, or management information systems. The number of degrees was incidental; the nature of the degrees was not. The material and decisive fact was that each of the three alternate degrees signified that the programmer analyst position required highly technical and specialized knowledge that could be imparted only by a bachelor’s degree or its equivalent in a specific specialty. In this case, a journalism, Irish studies, or other “related degree” does not require the highly technical and specialized knowledge of a specialty occupation.

The petitioner has failed to submit evidence to satisfy any of the specialty occupation criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position’s duties.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO considered the information on the news analysts, reporters, and correspondents occupations in the 2004-2005 edition of the *Handbook* and in the excerpt from the 2000-2001 edition that the petitioner entered into the record. As described in the record, the proffered position substantially comports with the reporter occupation as described in both *Handbook* editions. With regard to educational requirements, the 2004-2005 *Handbook* notes:

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.

This edition also states that “[e]mployers report that practical experience is the most important part of education and training.”

Thus, the *Handbook* indicates that, as a class, reporters are normally required to have a baccalaureate degree, but not in a specific specialty that conveys a body of highly specialized knowledge that must be applied in order to work as a reporter. It is conceivable that a particular reporting position - such as at a legal, medical, engineering, or scientific journal - would require at least a bachelor’s degree in a specific specialty because of a requirement to comprehend and write accurately and authoritatively upon highly technical and specialized topics. However, the petitioner here is not offering such a position.

The petitioner's printout of the ETAOWL Internet page shows an *O*Net* Job Zone 4 rating for reporters and correspondents. This information has no persuasive value, as it indicates only that DOL has placed these workers in a group of occupations for which most, but not all, require college degrees. Also, as the *O*Net* Job Zone information does not identify the range of majors that would be appropriate or required for any particular occupation, it is irrelevant to the instant issue of whether the proffered position normally requires a degree in a specific specialty.³

Counsel's statement to the effect that the proffered sports reporter position requires a bachelor's degree, such as the beneficiary's, that concentrates on Celtic history and culture, is not persuasive. The need for Celtic history and culture in sports reporting for the petitioner is not substantiated by the content of the petitioner's sports pages in the copy of the newspaper that is in the record or by any other evidence in the record. Contentions and conclusions of counsel or a petitioner and their elaborations on the record have no persuasive value unless the evidence in the record substantiates them. 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). The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Next, the petitioner has not satisfied either of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong assigns specialty occupation status to a position for which there is a baccalaureate or higher degree requirement which is common to positions in the petitioner's industry that are both (1) parallel to the proffered position, and (2) located in organizations that are similar to the petitioner.

Factors often considered by CIS when determining an industry hiring standard 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." *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 discussed above, the *Handbook* does not indicate an industry-wide practice of requiring that reporters in positions such as the one proffered here hold at least a bachelor's degree in a specific specialty. Also, the record does not include any submissions from firms or individuals in the industry attesting that they routinely employ and recruit only persons with at least a bachelor's degree in a specific specialty.

The evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." The extent to which the duties of the position are developed in the record indicates no such complexity or uniqueness.

³ The *O*Net* explanation about Job Zone Five simply states: "Most of these occupations require a four-year bachelor's degree, but some do not." (See: <http://online.onetcenter.org/report?r=1&id=356#JobZone>.)

Next, the petitioner has not met the specialty occupation provision at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) for positions for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty. With regard to the position in question, the petitioner has provided information only about the person currently working as its sports editor/reporter, and that information indicates that this person holds only a high school diploma.

Finally, the evidence does not satisfy the provision at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Neither the examples of the current sports editor/reporter's work in the April 7, 2003 edition of the newspaper nor any other evidence in the record indicates such specialization and complexity.

Because the proffered position does not qualify as a specialty occupation by application of any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO shall not disturb the director's denial of the petition on the specialty occupation ground.

The director was also correct in his decision to deny the petition on the ground that the petitioner failed to establish that the beneficiary is qualified to serve in a pertinent specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

The director found:

Even if you had established that the position qualifies as a specialty occupation, in that it requires a minimum of a baccalaureate degree in a directly related field, the beneficiary is not qualified for such a position. [CIS] noted [in the RFE] that the beneficiary's degree in Heritage Studies did not appear to qualify him at the professional level as a reporter. You were requested to submit additional evidence in regard to the beneficiary's qualifications for a specialty occupation. Although you briefly described the beneficiary's news reporting experience, you did not submit an advisory evaluation from an official authorized to grant college-level credit in the specialty, or any of the other requested evidence that would establish that the beneficiary's education and work experience is equivalent to at least a baccalaureate degree in a field directly related to the occupation.

On appeal, counsel disputes the validity of the director's findings. Counsel contends that the beneficiary is qualified by virtue of his bachelor's degree and reporting and writing experience.

Counsel cites AAO decision number LIN 99 045 52892, an unpublished, non-precedent decision. Counsel correctly notes that, in sustaining this petitioner's appeal, the AAO considered both the beneficiary's particular coursework and degrees. However, when considering the beneficiary's degree, the associated transcript, and descriptions of courses in this case, the petitioner has not established that beneficiary holds a degree that would qualify him for a specialty occupation.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) implements section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), which 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.

The degree referenced by section 214(i)(1)(B) of the Act means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

In implementing 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (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.

The petitioner in this proceeding must establish that the beneficiary meets the criterion at either section 2 or 4 of the regulation, as these are the only sections relevant to the evidence of record.

It may be said that section 2 has two evidentiary elements. First, the evidence of record must include an authoritative determination that the beneficiary's foreign degree is equivalent to at least a U.S. baccalaureate degree. Second, in line with the meaning of the statute which section 2 implements, the U.S.-equivalent

degree must be in a course of studies that conveys highly specialized knowledge that the beneficiary would have to apply, theoretically and practically, in order to perform the duties of the proffered position. The petitioner has reached the first threshold, but not the second.

The February 18, 2003 Evaluation of Academics submitted by [REDACTED] and Consulting (MEC) certainly establishes that the beneficiary "holds a foreign degree determined to be equivalent to a United States baccalaureate or higher degree" (namely, a bachelor's degree in Irish Heritage Studies, awarded by the [REDACTED] that MEC determined to be equivalent to a U.S. baccalaureate degree in Irish studies). However, neither the MEC evaluation nor any other evidence of record establishes that this degree is "required by the specialty occupation."

In order for the beneficiary's degree in Irish studies to be a qualifying degree for a specialty occupation sports reporter position, its underlying course of studies would have to convey highly specialized knowledge that the beneficiary would apply, theoretically and practically, to perform the duties of the proffered position. The evidence of record does not support that characterization.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) would require 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 record contains no evidence regarding sections 1, 2, and 5. The AAO has taken section 3 evidence into account by recognizing the validity of the MEC determination that the beneficiary holds a foreign degree that

is equivalent to a U.S. baccalaureate degree in Irish studies. However, as discussed above, by itself this degree is insufficient. Therefore, the AAO also evaluated the evidence in light of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

According to the express terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), a petitioner must demonstrate three years of specialized training and/or work experience for each year of college-level training the alien lacks. This provision imposes strict evaluation standards, stating:

[I]t must be *clearly demonstrated* [1] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [2] 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 [3] 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 occupation⁴;
- (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.

[Emphasis added.]

The beneficiary's resume, the comments of counsel and the petitioner about the beneficiary's background and experience, and the documentation about the beneficiary's three years of freelance work with the *Clare Champion* newspaper (June 10, 2003 letter from the editor) and his writing for student publications while at GMIT (4th Meitheamh, 2003 letter from the GMIT course coordinator) do not meet the requirement of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) that the record clearly demonstrate that the alien's training and/or work

⁴ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

experience included the theoretical and practical application of specialized knowledge required by the specialty occupation and 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.

The information in the record about the beneficiary's relevant work and experience is limited to sports-reporter coverage and writing; "creative writing" and student-publication writing "on subjects from sport[s] to archeology and genealogy" (GMIT course coordinator's letter); and "reviews of GAA fixtures around the West Clare region" (*Clare Champion* letter). This is not indicative of work requiring the theoretical and practical application of specialized knowledge that distinguishes a specialty occupation.

Finally, there is no evidence of the type of professional recognition required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (i) to (v).

The evidence of record does not establish that either by his degree alone, or by a combination of his degree and experience, the beneficiary possesses at least a bachelor's level of highly specialized knowledge that would have to be theoretically and practically applied to perform the duties of the proffered reporter's position. Accordingly, the petitioner has not satisfied the beneficiary qualification criteria of 8 C.F.R. § 214.2(h)(4)(iii)(C).

In summary, the director was correct in denying the petition because the petitioner has not established that the proffered position meets the definition of a specialty occupation or that the beneficiary is qualified to serve in a specialty occupation.

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.