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U.S. Citizenship and Immigration Services

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FILE: WAC 04 015 50371 Office: CALIFORNIA SERVICE CENTER Date: AUG 08 2005

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:

SELF-REPRESENTED

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 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 an importer and wholesaler of computer equipment and seeks to employ the beneficiary as a communications specialist/assistant. 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 because the proffered position does not qualify as a specialty occupation. On appeal, the petitioner submits a brief indicating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of 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 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 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 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 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 with the petitioner's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a communications specialist/assistant. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Assist management in translating corporate minutes (from English to Chinese), operations reports and financial documents;
- Assist management in organizing and translating business plans, Chinese supplier financial reports, Articles of Incorporation including the Chinese company's business certificate, Chinese business monthly circulation, newspapers, and advertising materials;
- Translate the parent company's financial documents and products brochure to English;
- Assist executives in the writing and preparation of annual management and financial reports to be submitted to the parent company, and employee performance evaluation documents and summaries;
- Assist the promotion/sales manager in preparation of Chinese and English reports to be submitted to management;
- Assist the sales manager in promotion of company products by: developing the contents of the corporate web site in both English and Chinese; working with the customer service representative and sales manager and assist them in preparation of monthly sales reports in English and Chinese; preparing articles and product descriptions in Chinese and English to be used on the web site, making sure that all written materials to be used on the site are accurate and correct; and ensuring that all web contents written in Chinese conform to Chinese reading habits and are consistent with Chinese culture, tradition and systems.

The petitioner requires a minimum of a bachelor's degree in linguistics, journalism or a related field for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for interpreters and translators, and do not include duties normally performed by writers and editors as stated by the petitioner, or market research analysts as contended by the director. The beneficiary would also perform some marketing and administrative duties. The *Handbook* states that writers and editors communicate through the written word and generally fall into one of three categories: writers and authors; editors; and technical writers. The duties detailed by the petitioner do not fall within the duties for these categories of workers, but rather within the duties of interpreters and translators. 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 promotions 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 general readership. They plan and edit technical materials and oversee the preparation of illustrations, photographs, diagrams, and charts.

*See Handbook, 2004 – 05 edition, Writers and Editors, p. 275.*

On the other hand, interpreters and translators enable cross-cultural communication by converting one language into another. They relay concepts and ideas between languages and must thoroughly understand the subject matter in which they work so that they are able to convert information from one language into another. The job duties of the position fall into this classification. The *Handbook* notes that while the educational backgrounds of interpreters and translators vary, a bachelor's degree is almost always required. A degree in a specific specialty, however, is not required. Knowledge of a language in addition to a native language is a given, but beyond that, there are many educational options. Interpreters and translators note that it is acceptable to major in something other than a language in order to successfully perform the duties of the position. Specialized training in how to do the work is also generally required. It is, therefore, apparent that a degree in a specific specialty is not a minimum requirement for entry into the proffered position as interpreters and translators may come from a variety of educational disciplines. The petitioner has not satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The remaining duties to be performed by the beneficiary involve administrative and marketing tasks (i.e., gather and organize employee performance evaluations, assist in the preparation of reports, prepare articles and product descriptions for the web site). These tasks are routine for administrative support and marketing personnel. The record does not establish, with regard to these duties, that: a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position; a degree requirement is common to the industry in parallel position among similar organizations; the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty; or knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish that these duties meet the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1),(2), or (4).

The petitioner states that a degree in a specific specialty is common to the industry in parallel positions among similar organizations, and in support of that assertion submits copies of job advertisements for translators and communications/public relations specialists. The advertisements do not establish that the advertising employers are similar to the petitioner or that the positions advertised are parallel to the proffered position. Furthermore, the advertisements submitted are insufficient in scope to establish an industry educational standard for the position offered. The advertisements are, therefore, of little evidentiary value and do not establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also asserts that previous agency decisions have classified the offered position as a specialty occupation. This reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire record of proceedings in the petitions referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). 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). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. 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 specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as a communications specialist/assistant. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h).

The petitioner does not state that it normally requires a degree in a specific specialty for the proffered position and offers no evidence in this regard. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally the nature of the specific duties is not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, nor are the duties so complex or unique that they can be performed only by individuals with a degree in a specific specialty. The duties to be performed are routine in the industry for translators/interpreters and marketing/administrative personnel, and are regularly performed individuals with educational backgrounds in a wide range of disciplines. The petitioner has failed to establish either of the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

Although the appeal will be dismissed, the AAO notes that the director based his decision, in part, on an improper standard. In his decision, the director found that the petitioner's offer of employment was not credible because the type of business operated by the petitioner would not require business expansion in China or Taiwan to the degree claimed by the petitioner. The director also stated that ". . . it would seem

more likely that if the petitioner is an importer of goods, that the petitioner would be more interested in targeting the American consumer. . . .” Although CIS must consider the reasonable needs of the petitioning business if staffing levels are considered as a factor, the director must articulate some rational basis for finding a petitioner's staff, structure, business practice or logic to be unreasonable. *See* section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). It is the petitioner's right to determine its reasonable business needs, objectives, and how those needs and objectives will be met. For this reason, the director's decision will be withdrawn, in part, as it relates to the reasonable needs of the petitioning business.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.