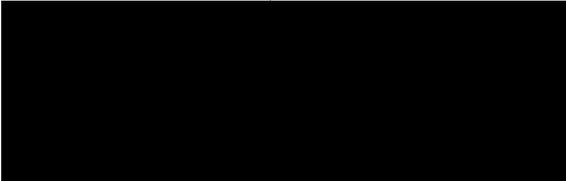


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DZ

FILE: EAC 04 056 52533 Office: VERMONT SERVICE CENTER Date: DEC 05 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be withdrawn. The petition will be remanded.

The petitioner manufactures textile products in China and imports them for distribution in the United States. 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 on the ground that the beneficiary does not qualify 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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (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.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform the services of 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.

For the purpose of deciding whether the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 8 C.F.R. § 214.2(h)(4)(iii)(D) provides that the determination shall be based on 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 [CIS] 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. 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 <sup>1</sup> 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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as an overseas producer, importer, and wholesale distributor of textile products, primarily from China. The petitioner states that its business was established in 2002, has three full-time employees, and that gross annual income exceeded \$1.2 million in 2003. The petitioner proposes to employ the beneficiary as a technical writer. In a letter accompanying Form I-129 the petitioner explained that the beneficiary would "be primarily responsible for the preparation, drafting, reporting and documentation of all government required documentation . . . as required by . . . government agencies in both the United States and China," including the translation of documents between English and Chinese. In addition, the petitioner indicated that the beneficiary would "write and edit proposals and other related technical administrative documentation and reports," as well as produce the Chinese edition of the company's manuals, briefs, catalogues, related technical and administrative publications, and promotional materials. The petitioner declared that the beneficiary was qualified for the position by virtue of his bachelor of arts degree, with a major in Chinese language and literature, from Sungkyunkwan University in Seoul, South Korea, granted on August 25, 1997. According to the report of an education credentials evaluation service, the beneficiary's degree is equivalent to a bachelor of arts degree in Chinese language and literature from a U.S. college or university.

In response to the RFE the petitioner provided additional details about the duties of the proffered position. As explained by the petitioner:

[The beneficiary] will have responsibility for the drafting and preparation of a number of documents in the Chinese language . . . includ[ing] business feasibility studies and business proposals as well as reports, contracts and other related documents . . . . The position involves . . . the actual preparation of documents in the Chinese language, not merely the translation of documents from English or any other language into the Chinese language. [The beneficiary] will . . . write, draft and interpret all technical corporate

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<sup>1</sup> *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).

information from Chinese . . . into English . . . . [as well as] write and edit proposals and other related technical administrative documentation and reports . . . .

. . . . A significant amount of the materials that [the beneficiary] will be drafting requires the conveyance of highly technical information as well as critical information on contents, quantity, pricing, storage warnings, usage instructions, etc.

Approximately 80% of [the beneficiary's] time . . . will be spent in the preparation and drafting and revision of commercial, technical and business documents and reports for our company's international business operations. Another 20% of [the beneficiary's] time . . . will be spent on related highly technical translation work . . . .

In his decision the director, drawing on information in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, indicated that a technical writer can qualify for H-1B classification if the particular position requires a four-year baccalaureate degree in a specific field related to the company's business. With respect to the instant petition, however, the director determined that the beneficiary did not have the requisite educational degree to be qualified to perform the services of a technical writer in the textile industry. In the director's view, the beneficiary's degree in Chinese language and literature, while it may enable him to perform some writing and translating functions, would not give him the knowledge or technical expertise to perform the duties of a technical writer in the textile industry. The director concluded that the record failed to establish that the beneficiary is qualified to perform services in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On appeal the petitioner asserts that the beneficiary is qualified to perform the services of the proffered position on the strength of his bachelor of arts degree in Chinese language and literature, in addition to five years of employment experience as a technical writer from 1998 to 2003. In support of the appeal the petitioner resubmits copies of the beneficiary's graduation certificate, transcripts, and the educational credentials evaluation report declaring that the beneficiary's degree is equivalent to a bachelor of arts in Chinese language and literature from a U.S. college or university, along with two new letters from the beneficiary's previous employers during the years 1998 to 2003.

The educational requirements of writers and editors, and the occupational sub-category of technical writers, are described In the DOL *Handbook*, 2004-05 edition, at 276:

A college degree generally is required for a position as a writer or editor. 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.

Increasingly, technical writing requires a degree in, or some knowledge about, a specialized field – engineering, business, or one of the sciences, for example. In many cases, people with good writing skills can learn specialized knowledge on the job. Some transfer from jobs as technicians, scientists, or engineers. Others begin as research assistants or as trainees in a technical information department, develop technical communication skills, and then assume writing duties.

As indicated in the *Handbook*, a technical writing position normally requires a college degree, plus some knowledge about a specialized field directly related to the job. That specialized knowledge can be acquired by means of an educational degree or on-the-job experience. Based on the information in the *Handbook*, the AAO determines that the beneficiary is qualified for the proffered position. The *Handbook* indicates that for all writers, a college degree is required, but does not specify the type of degree. Under the *Handbook*, a beneficiary may be qualified as a technical writer with any college degree and work experience in the field. The petitioner indicates that the beneficiary is qualified by virtue of his degree in Chinese language and literature and work experience in the textile industry. Thus, the record establishes the beneficiary's qualifications to perform the services of the proffered position. Accordingly, the grounds for the denial of the petition have been overcome and the director's decision must be withdrawn.

The petition cannot be approved, however, unless the petitioner can establish that the technical writer position qualifies as a specialty occupation. The director did not address this issue in his decision. As provided in 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 petition will be remanded for a determination as to whether the proffered position qualifies as a specialty occupation. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the proffered position is a specialty occupation, and any other evidence the director may deem necessary. The director shall then issue a new decision based on the evidence of record relating to the requirements of a specialty occupation. As always, the burden of proof rests with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision of May 21, 2004 is withdrawn. The petition is remanded to the director for entry of a new decision. If the decision is adverse to the petitioner, it shall be certified to the AAO for review.