

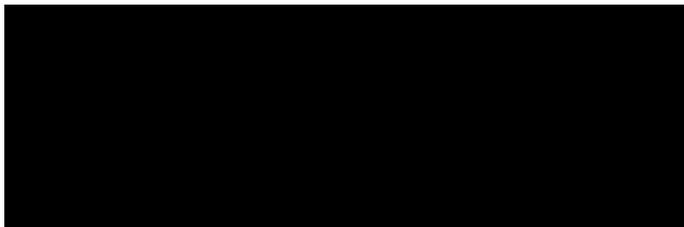
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U.S. Citizenship
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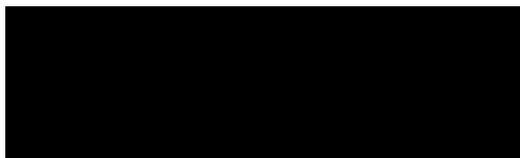
FILE: WAC 03 140 51225 Office: CALIFORNIA SERVICE CENTER Date: NOV 01 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner, with ten employees, is the research and development arm of a global semiconductor foundry with offices in Taiwan, Japan, Singapore, Europe and the United States. It seeks to employ the beneficiary as a copywriter 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 the record did not establish the proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B. The AAO reviewed the record in its entirety before reaching its decision.

The initial issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS must examine the ultimate employment of the alien. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the duties of the position actually require 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.

The petitioner states that it is seeking the beneficiary's services as a copywriter. Evidence of the beneficiary's duties includes: the Form I-129, with a March 27, 2003 letter of support from the petitioner; and counsel's October 6, 2003 response to the director's request for evidence.

As stated by counsel in response to the director's request for evidence, the beneficiary would be required to:

- Write and edit marketing and communication materials, including the writing, translating and editing of product specifications, company profiles, and other informative and promotional materials for printed and electronic publication by the petitioner and its parent company (50 percent of the beneficiary's time);
- Confer with engineering staff to obtain information on product and discuss style and length of promotional and technical support material copy (5 percent of the beneficiary's time);
- Obtain additional background and current market, customer and product information through research and formulate presentation approaches (5 percent of the beneficiary's time);
- Prepare press releases and fact sheets, and compose letters (10 percent of the beneficiary's time);
- Write and edit business reports and proposals for various projects (15 percent of the beneficiary's time); and
- Review and edit documentation written by colleagues to ensure compliance with company's standards regarding order, clarity, conciseness, style and terminology (15 percent of the beneficiary's time).

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular

occupations, reports 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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The director, relying on the 2004-2005 edition of the DOL *Handbook*, found the petitioner's proffered position of copywriter to be closely aligned to the work of writers and editors, an occupation that generally requires those seeking employment to hold baccalaureate degrees. However, because the occupation does not require a baccalaureate degree in a field directly related to the work of writing or editing, the director found the petitioner could not establish its proffered position as a specialty occupation under the first requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. Based on its own reading of the *Handbook*, the AAO concurs with the director's findings.

The duties of the proffered position, which would require the beneficiary to both write and edit the petitioner's communications and marketing materials, combine the employment of a copywriter and copy editor. In that both types of employment – copywriting and copy editing – are encompassed within the occupation of writers and editors discussed by the *Handbook* at pages 274-275, the AAO concludes that the proffered position falls within this occupational title and turns to the educational requirements for employment as a writer or editor.

These requirements are outlined by the *Handbook* at page 276:

A college degree is generally 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 specialized 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.

As the above discussion indicates, employers seeking writers and editors will accept a broad liberal arts background as a degree requirement for a writer or editor. To establish employment as a specialty occupation, there must be a close corollary between the position and the required degree. When a job can be performed by a range of degrees or a degree of generalized title, like liberal arts, without further specification, the position does not qualify as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As previously noted, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(A)(1) to require a degree in a specific specialty that is directly related to the proffered position. Thus, the petitioner cannot establish its proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As the petitioner is unable to establish the proffered position as a specialty occupation under the first criterion, the AAO will review the record before it to determine whether it contains evidence that will satisfy the requirements of any of the other three alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Based on the information provided by the petitioner, the AAO does not find the proposed duties to comprise either a position that is identifiable with an industry-wide educational standard, or that is distinguishable, by uniqueness or greater complexity, from a similar but non-degree-requiring position, as required to satisfy the requirements of the second criterion. Nor has the petitioner documented a history of its normal recruiting and hiring for the position, evidence that could establish its proffered position as a specialty occupation under the third criterion. However, the AAO's review of the evidence of record does find the petitioner to have proven that the proffered position's duties are sufficiently specialized and complex to establish it as a specialty occupation under the fourth criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(4). As the duties of the proffered position would require the beneficiary to perform the duties of a copywriter and editor in preparing the marketing materials and publications of a highly technical industry, the AAO concludes that the knowledge required to perform such duties would usually be associated with the attainment of a baccalaureate degree in journalism or communications. Accordingly, the AAO withdraws the director's determination that the proffered position is not a specialty occupation.

The AAO now turns to a consideration of whether the beneficiary whom the petitioner seeks to employ is qualified to perform the duties of the proffered position of copywriter.

In determining whether an alien is qualified to perform the duties of a specialty occupation, CIS looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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.

At the time of filing, the petitioner submitted evidence to establish that the beneficiary holds a foreign degree equivalent to a U.S. baccalaureate or higher degree required by the proffered position, including copies of a statement signed by the chairman of the board and president of the Chinese Culture University in Taiwan certifying the beneficiary's 1992 graduation from the University's Department of Mass Communication, the beneficiary's academic transcript, and an evaluation of her academic record by Global Education Group, Inc. in Miami Beach, Florida. The evaluation, which indicates it is based on the beneficiary's transcript and degree certificate, finds the beneficiary to possess the equivalent of a bachelor's degree in communications from a regionally accredited college or university in the United States.

Having reviewed the evidence of record with regard to the beneficiary's qualifications, including the beneficiary's academic transcript, the AAO finds the petitioner to have established that the beneficiary holds the equivalent of a U.S. baccalaureate degree in communications, a degree directly related to the employment of copywriters and editors. Therefore, the beneficiary is qualified to perform the duties of the proffered position.

For reasons related in the preceding discussion, the petitioner has successfully established both that its proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of this position. Accordingly, the AAO will sustain the petitioner's appeal and will withdraw 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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.