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**U.S. Citizenship
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Services**

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FILE: WAC 04 066 53148 Office: CALIFORNIA SERVICE CENTER Date: **OCT 03 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, 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 federal contractor. It seeks to hire the beneficiary as a technical writer. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was 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, with counsel's brief and new and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The 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, a 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 does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *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 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.

The petitioner states that it is seeking the beneficiary’s services as a computer engineering bidding analyst. Evidence of the beneficiary’s duties includes: the Form I-129; and a December 30, 2003 letter from the petitioner and counsel’s response to the director’s request for evidence.

At the time of filing, the petitioner stated that the beneficiary’s duties entail: participating in the formulation of user manuals, development and recommendation to management of system(s) and/or programs; including but not limited to technical instruction manuals and how-to-use guides for complex deliverables; organizing material and complete writing assignment according to government standards regarding order, clarity and terminology; researching, analyzing and studying the peripherals/products to be procured by the company through research, reading books, journals, brochures, publications and attendance at trade fairs and seminars supplied by the suppliers and wholesalers; developing and maintaining a compliance training manual, which effectively addresses requirements of applicable laws and regulations, the petitioner’s related policies and procedures; coordinating with the applicable departments, assisting, or conducting compliance training for all applicable new and existing laws and regulations; will be responsible for the input of scientific and technical information into easily understandable language; preparing scientific and technical reports, operating and maintenance manuals, catalogues, parts lists and assembly instructions; planning and editing technical reports and overseeing preparation of illustrations, photographs, diagrams, and charts; assembling manuals and instruction pamphlets which contain warnings and precautions for handling products. The petitioner indicated that a bachelor’s degree or it equivalent is the minimum requirement to fulfill the job.

The director requested additional evidence that the proffered position meets one of the above criteria. Additionally, the director requested evidence that the beneficiary is qualified to perform in the claimed specialty occupation. The director requested information about the company such as copies of company brochures or any other printed work published by the petitioner which outlines, in detail, the products or services provided by its company. The director requested copies of the petitioner’s signed income tax returns that have been certified by the IRS with all required schedules. The director requested a list of petitions filed and requested an explanation of the petitioner having filed over 35 H-1B petitions and the petitioner having indicated 36 employees on the Form I-129. The director requested copies of the Form 941, quarterly wage report for the last three quarters, a payroll summary, a list of all employees with names and immigration status and the petitioner’s organizational chart.

Counsel responded to the director’s request and stated that the position of technical writer is a specialty occupation and referred to the Department of Labor’s *Occupational Outlook Handbook (Handbook)*,

Fragomen's *H-1B Handbook 2003* and Lawler's *Professional's A Matter of Degree* 4th Edition in support of his contention. Counsel referred to the position description and stated that due to the complexity of the proposed duties, the employer expressly stated in its job notices that a bachelor's degree or its equivalent is the minimum requirement to fulfill the job. Counsel explained that each company has its own preferences with regards to hiring individuals and has its own distinct position and that the petitioner's decision to hire a technical writer should not be compared to other similar organizations. The petitioner submitted various internet ads for technical writers. Counsel noted that this is a new position and asserted that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is essentially associated with the attainment of a baccalaureate degree. The petitioner submitted the beneficiary's transcripts. The petitioner submitted a Form 1065 U.S. Return of Partnership Income which indicated gross receipts or sales of \$27,138,649 for tax year 2002. The Form 1065 also indicated salaries and wages of \$2,985,230. The petitioner submitted a list of 29 approved H-1B petitions with their receipt numbers. The Petitioner submitted one receipt notice. The petitioner submitted forms 941 quarterly federal tax return for three quarters indicating approximately 70 employees. The petitioner submitted copies of a lease agreement and photographs of an office. The lease agreement addendum indicated that the petitioner had leased an office with 425 square feet. In response to the director's request for additional information about the petitioner such as printed materials and brochures, the petitioner submitted a statement indicating that it is licensed to sell goods and services to Federal Agencies of the United States government and provides an item code list of the goods and services. The petitioner provided a list of clients and contact information at different federal agencies. The petitioner also provided a list of products and services normally purchased by the army and defense logistics agency.

The director denied the petition. The director noted that the petitioner submitted pages from *Handbook's* section of writers and editors. The director noted that the *Handbook* states:

Communicating through the written word, writers and editors generally fall into one of three categories. *Writers and authors* develop original fiction and nonfiction for books, magazines, trade journals, online publications, company newsletters, radio and television broadcasts, motion pictures, and advertisements. . . . *Technical writers* develop technical materials, such as equipment manuals, appendices, or operating and maintenance instructions. They also may assist in layout work.

The director noted that the educational requirements as listed in the *Handbook* for the position are:

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.

The director determined that although a baccalaureate level of training is required, it is not a normal industry-wide minimum requirement for entry into the occupation and therefore the proffered position is not a specialty occupation.

On appeal, counsel restates the beneficiary's duties and notes that the beneficiary will research on the variable materials and services in the market, test and analyze such products and services to their practical properties

and quality. Counsel contends that the proffered position is a specialty occupation and that the *Handbook* supports his contention.

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 considers 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 *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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 812 F. Supp. 872, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

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 *Handbook* for information about the duties and educational requirements of particular occupations. Some of the duties of the proffered position resemble those of a technical writer found under the occupation of writer and editor, as noted by the director. The *Handbook* notes that 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.

The petitioner fails to establish the first criterion because the *Handbook* states that although some employers look for a broad liberal arts background, most prefer to hire people with degrees in communications, journalism, or English. Even though the *Handbook* notes that increasingly, technical writing requires a degree in, or some knowledge about, a specialized field—engineering, business, or one of the sciences, the petitioner has not indicated in which field of study the proffered position would specialize. The *Handbook* reveals that a bachelor's degree in a specific specialty is not required for a technical writer position. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on submitted internet job postings from various companies: xScion Solutions, LLC, Boston Scientific and GE Medical Systems. This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. The advertised positions are not parallel to the proffered position. For example; xScion Solutions, LLC is an information technology professional services firm and specifies a bachelor's degree;

Boston Scientific is a medical device company. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the duties of the proffered position are performed by technical writers, a position that does not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. Counsel admits that this is a new position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Although the *Handbook* noted that some technical writers may be required to have a degree in a specific area, the petitioner has not indicated in which area the beneficiary would be working. The petitioner has not provided evidence of government contracts or the complexity of the contracts. It has not described the products that the technical writer will be writing about. The record does not contain evidence that the petitioner sells or manufactures products that requires a technical report or manual. It cannot be concluded that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Once again, the *Handbook* reveals that some of the duties of the proffered position are performed by a technical writer, an occupation not requiring a bachelor's degree in a specific specialty.

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.

Beyond the decision of the director, the petitioner has not included evidence of the beneficiary's educational evaluation as required by the regulations. The beneficiary has not graduated from a U.S. university. The petitioner submitted a copy of the beneficiary's degree from a foreign university. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (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 record does not contain evidence that the beneficiary's foreign degree has been found to be the equivalent of a United States baccalaureate or higher degree. Because the proffered position is not a specialty occupation, the beneficiary's qualifications need not be discussed further.

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.