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20 Mass. Ave. N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 04 047 50987 Office: CALIFORNIA SERVICE CENTER

Date: OCT 04 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 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 the owner and operator of gas stations, car washes, food marts, and income properties. In order to employ the beneficiary as a technical writer, the petitioner filed this petition to classify the position as an H-1B nonimmigrant worker in a specialty occupation, 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).

The director denied the petition on the basis that the petitioner had failed to establish that the proffered position meets the definition of a specialty occupation set forth in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief and allied documents grouped in Tabs lettered A through C. Counsel contends that the petitioner's business operations necessitate employment of a technical writer with a bachelor's or higher degree.

The director's decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, counsel's April 19, 2004 brief on appeal, and the documents enclosed with the brief under Tabs A through C.

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 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.

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.)

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) 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.

In its February 23, 2004 letter of reply to the RFE, the petitioner described the proffered position as follows:

The [beneficiary] will be responsible to develop, write and edit all technical materials and promotional materials and company handbooks and manuals for utilization by the [petitioner] in its government compliance programs as well as in its marketing and promotions to various customers, consumers and clientele. The [beneficiary] will receive assignments from the [petitioner] with regard to needs for compliance with government regulations, personnel management and marketing materials. He will observe, interview personnel and read materials to become familiar with specialized and professional requirements, technical requirements, regulatory requirements and other relevant information. The [beneficiary] will coordinate various activities of the company as needed for the written assignment. [He] will review required catalogs, drawings, financial, personnel data and other data relative to

various operations, will study specifications and will integrate and delineate needed information and material. The [beneficiary] will organize materials and will develop and complete written materials as needed. The [beneficiary] will select photographs, drawings[,] sketches and other illustrative materials, as well as providing required citations to government regulations and compliance programs as need for the written materials.

The [beneficiary] will be responsible for developing and writing and editing all manuals for internal use including personnel manuals, compliance manuals such as gas and oil, EPA, emission compliance, OSHA, Workers Compensation, Employment Policies, Permitting [R]equirement[s], Department of Weights and Measures, Department of Sanitation, Marketing brochures and other such required programs designated by the [petitioner].

On appeal, counsel continues to maintain that the petitioner's business operations necessitate the hiring of a technical writer with at least a bachelor's degree in order to ensure "compl[iance] with multiple governmental statutes and regulations promulgated by several Federal and State agencies including the EPA, Oil and Gas, IRS, AQMD, L.A. Dept. of Building and Safety, Labor Board, OSHA, Department of Health, City of Los Angeles, Department of Weights and Measures, Department of Toxic [S]ubstance Control, Air Resources Board, State Fire Marshall, and the Department of Sanitation." (Brief, at page 2.)

The AAO finds that the duty descriptions and all the other information presented about the proffered position, the petitioner's operations, and its practical problems with regulatory compliance do not establish that performance of the position necessitates a degree in a specific specialty. The evidence establishes that the duties of the position require a person with at least a bachelor's degree because of the reading comprehension, research, analytical, and writing skills that are generally associated with the attainment of a college degree regardless of the related academic major or concentration of studies. However, the evidence of record does not establish that performance of the position requires the theoretical and practical application of a body of highly specialized knowledge related to a specific specialty, and the attainment of a baccalaureate or higher degree in the specific specialty. Therefore, the evidence of record does not satisfy any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) by establishing that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties.

CIS recognizes the Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. The section "Writers and Editors" at pages 274-277 of the 2004-2005 edition of the *Handbook* indicates that some employers of writers, including technical writers, look for a broad liberal arts background, and most prefer to have someone with a bachelor's degree in communications, journalism, or English as the normal minimum educational requirement. Because the *Handbook* indicates that a broad liberal arts background is an acceptable minimum requirement for entry into the position, the position cannot be found to require a degree in a specific specialty under the first criterion. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business

administration or liberal arts, without further specification, does not establish eligibility. *See Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558, 560 (Comm. 1988). Accordingly, the *Handbook* does not support the proffered position as a specialty occupation.

The petitioner's reference, in its RFE reply, to the section on technical publication writers in the DOL's *Dictionary of Occupational Titles (DOT)* is not persuasive. The *DOT* has little relevance for specialty occupation determinations. In contrast to the *Handbook*, it does not identify particular degrees that employers require for specific occupations. The worker function and SVP (Specific Vocational Preparation) ratings do not establish whether a position requires the minimum of a bachelor's degree, or its equivalent, in a specific specialty. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. Further, the *DOT* job description is substantially broader than proposed duties described in the record.

The record's job advertisements from other firms are not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), as the evidence does not establish substantial similarity between the performance requirements of the proposed duties and those of the advertised positions.

As the evidence of record does not establish that the proffered position is one with a normal minimum entry requirement of a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not presented evidence to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is for a position with a requirement for at least a bachelor's degree in a specific specialty that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As discussed above, the petitioner has not established that the proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The record contains no attestations from individuals or other firms or from a professional association that the position is one for which employers in the petitioner's industry have a routine practice of recruiting and hiring only persons with at least a bachelor's degree in a specific specialty. As noted earlier, the record's job advertisements from other firms are inconsequential. As the evidence does not establish that the proffered position and those advertised are substantially similar in their specific duties and actual performance requirements, and as the advertised

positions are not in any of the industries identified by the petitioner for the beneficiary's work, the job advertisements are not relevant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not presented any evidence to establish that the proffered position qualifies as a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), that is, by virtue of an established history of the petitioner's recruiting and requiring for this position only persons with at least a bachelor's degree in a specific specialty. This appears to be the first time that the petitioner is proffering the technical writer position.

The evidence of record does not establish either that this particular position is so complex or unique that it can be performed only by an individual with a degree (so as to satisfy the second alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)), or that the specific duties are so specialized and complex that their performance requires knowledge usually associated with at least a baccalaureate degree in a specific specialty (so as to satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)). On appeal, the petitioner asserts that the complexity required for a specialty occupation resides in the variety, complexity, and highly technical nature of the regulations that its technical writer would address. The petitioner's contentions in this regard are not persuasive, as they are not substantiated by the evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaignena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

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