



U.S. Citizenship
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Services

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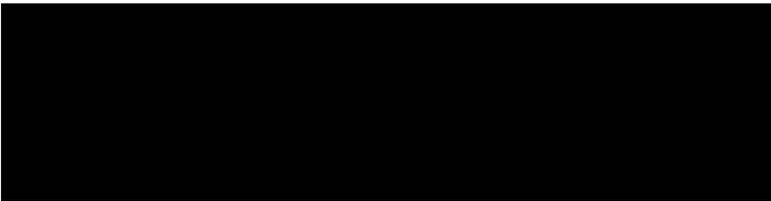


FILE: WAC 04 800 54960 Office: CALIFORNIA SERVICE CENTER Date: APR 03 2006

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.

for *Michael T. Kelly*
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 weekly English/Persian periodical that seeks to employ the beneficiary as a technical writer and to classify her 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 basis that the petitioner did not provide sufficient evidence to establish that the proposed position is a specialty occupation. On appeal, counsel submits a brief.

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.

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 criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) Form I-290B and accompanying brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a technical writer. In the initial petition, the petitioner stated in its support letter that the beneficiary would perform the following duties:

write a variety of technical articles, reports, brochures, and/or manuals and documentation for a wide range of uses. She will also be responsible for coordinating the display of graphics and the production of the related documents. Moreover, inasmuch as she has medical education, she is well qualified to write, edit, and prepare health related articles with latest news on development and progress of the medical science.

In response to the director's RFE, the petitioner submitted a job announcement for the proposed position that read, in part, verbatim:

[The petitioner] is looking for energetic technical writer to write a variety of technical articles, reports, brochures, and/or manuals for a wide range of uses; responsible for coordinating the display of graphics and the production of the document.

Also, in the response to the RFE, counsel stated that the beneficiary would:

be in charge of preparing and drafting such medical reports and articles. In this capacity, she will be in charge of writing a variety of technical articles, reports, and news, for a wide range of usage. She will be responsible for coordinating the compilation of graphics and the production of documents.

The alien will engage in research and studies through medical publications and literature in order to keep the employer's readers apprised as to the latest medical discoveries, approved medications, and newest dietary regiments.

The petitioner likened its publication to "People" and "Cosmopolitan" and stated that it would only consider candidates for the position who have a degree in the field of health, biochemistry, medicine, or medical science.

The director concluded that the petitioner failed to provide sufficient evidence that the proposed position is a specialty occupation under any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the beneficiary is a member of the professions and that the proposed position requires a member of the professions due to the sensitive nature of the duties.

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 proposed position is not a specialty occupation.

To determine 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 highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. Based on a thorough review of the proposed duties alongside the *Handbook's* description of technical writers, the AAO agrees with the petitioner and the director that the proposed duties most closely resemble those of a technical writer.

To determine whether the position is a specialty occupation, the AAO first turns to the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) - a bachelor's or higher degree or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the particular position. The AAO looks at the *Handbook's* discussion of the educational requirements for technical writers to determine whether or not this criterion has been established. The *Handbook* states the following regarding the educational requirements for writers, in general, and technical writers, in particular:

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 law, 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—for example, engineering, business, or one of the sciences. In many cases, people with good writing skills can acquire 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 *Handbook* indicates that jobs in this area do not require specific bachelor's degrees for entry into the field. It also indicates that being bilingual is sometimes helpful for these positions. Employers will consider those with liberal arts degrees but prefer those with writing backgrounds. In specialized areas, employers expect additional knowledge, and sometimes, degrees in the particular area. In many cases, that specialized knowledge can be acquired on the job and no specialized degree is necessary. Individuals may start out as research assistants and work their way up into writing positions. As such, the petitioner has failed to establish that a bachelor's or higher degree, in a specific field of study, is the normal minimum requirement for entry into this occupation. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - that a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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)). On appeal, counsel asserts that common sense dictates that a degree in medical sciences must be a requirement in the industry in parallel writer positions among periodicals similar to the petitioner. Counsel asserts: "the mere fact this petitioner is publishing articles pertaining to healthcare services, indicates that it is engaged in the safety, welfare and well-being of the public. This simple fact makes the higher degree in a medical field a prerequisite for the underlying position." Neither counsel, nor the petitioner has submitted any evidence to support this assertion. The copy of the magazine submitted into the record does not contain any articles in English. While some of the advertisements are in English, there is no indication of record that the publication is bilingual, as stated by the petitioner. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter*

of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner states that the magazine is similar to *People* or *Cosmopolitan*, neither of which focus primarily on medical issues. There is no certified translation of the magazine of record indicating that the magazine publishes medical articles that would require a degree in medicine. 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)). Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – the employer normally requires at least a bachelor’s degree or its equivalent, in a specific field of study, for the position. To determine whether a petitioner has established this criterion, the AAO generally reviews the petitioner’s past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, this criterion is not a factor as the petitioner has not submitted evidence to establish a consistent history of hiring individuals with specialized degrees for similar positions and implies, on appeal, that this a newly created position.

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to 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 bachelor’s or higher degree in a specific field of study. Counsel asserts that the proposed position is “not only unique, but extremely complex” because the medically related articles the beneficiary would write must be accurate and original. As noted above, the petitioner has not submitted any corroboration of its statement that it publishes medical articles. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*. According to counsel, if the beneficiary commits any errors in writing the articles, she could “jeopardize the life of the company and wipe out the entire investment of its shareholders.” The *Handbook* indicates that writers “must demonstrate good judgment and a strong sense of ethics in deciding what material to publish.” Writing responsible, accurate articles for publication is not unique to this particular position. These are duties routine to any writer position, technical or otherwise. Without documentary evidence to support counsel’s claim that this particular writer position is more complex or specialized than other technical writer positions, the assertions of counsel will not satisfy the petitioner’s burden of proof. *Matter of Obaigbena*; *Matter of Laureano*; *Matter of Ramirez-Sanchez*. The petitioner has not established that the proposed position is a specialty occupation based upon the complexity, specialized nature, or uniqueness of its duties.

As always, 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.