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FILE: WAC 04 217 51129 Office: CALIFORNIA SERVICE CENTER Date: JUN 06 2006

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:

SELF-REPRESENTED

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, Chief  
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 law firm that seeks to employ the beneficiary as a technical publications writer/researcher. The petitioner, therefore, endeavors to classify the beneficiary 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 because the proffered position is not a specialty occupation. On appeal, the petitioner submits a brief.

The AAO notes that Mr. [REDACTED] is no longer active with the State Bar of California. There is no evidence of record that the petitioner's practice was transferred to another lawyer or law firm. Thus, the petition appears moot.

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 baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

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

The petitioner is seeking the beneficiary’s services as a technical publications writer/researcher. Evidence of the beneficiary’s duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner’s support letter; and the petitioner’s response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail: acquiring all relevant data and information related to U.S. immigration through extensive research; exhausting all information regarding new laws, policies, rules, and regulations, as well as various issues on U.S. immigration; collecting, analyzing, advising, and recommending factual information and use of pertinent information to develop numerous technical publications and articles for our immigration law offices; developing technical publications with proper citation in legal writing and using them as a communication tool between the immigration law offices and the target market; developing and maintaining a library and archival collection and providing research assistance and collecting reference materials. The petitioner asserts that it requires a bachelor’s degree in business, English, journalism, or communications for the proposed position.

The director stated that the proposed position resembles a paralegal/legal assistant as that occupation is described in the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*), and that those positions do not require a bachelor’s degree in a specific specialty. The director stated that a bachelor’s degree in business administration is insufficient in establishing a position as a specialty occupation and a beneficiary as qualified to perform a specialty occupation, and he cited several cases including *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968) and *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558 (Comm. 1988) to support his statement. The director found that the beneficiary did not qualify on education alone to perform the duties of a specialty occupation. In response to the petitioner’s claim that it normally requires a degree or its equivalent for the position, the director cited *Defensor v. Meissner*, 201 F. 3d 384, 387 (5<sup>th</sup> Cir. 2000) and he stated that the offered position does not meet the statutory definition of a specialty occupation. The director concluded that the petitioner satisfied none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that the proposed position differs from a paralegal. The petitioner turns to the educational evaluation from Trustforte Corporation to establish that the offered position is a specialty occupation. The petitioner asserts that the beneficiary’s bachelor’s degree in business administration, particularly with its focus on operations management, is appropriate for the proposed position. The petitioner states that the beneficiary previously engaged in research and technical writing and technical publication for *Textionary Enterprise*. Citing *Mindseye vs. Ilchert*, (C-87-2062-WWS, N.D. Cal., March 4, 1988), the petitioner states that the director should not question the petitioner’s need for a position. The petitioner states

that the submitted prevailing wage determination from the Employment Development Department (EDD) reflects that the offered position has a Job Zone category of 5, an SVP rating of 8 and above, and a Standard Occupational Classification (SOC) Code of 27-3042.00. The petitioner refers to job postings and information in the *Occupational Information Network (O\*NET)* to show that the offered position is a specialty occupation. With respect to the job postings, the petitioner cites *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal., 1989), to establish that the size of the operation bears no rational relationship to the need for a professional. The petitioner maintains that it normally requires a bachelor's degree for the proposed position, and the petitioner submits evidence to show that former and current employees hold the following degree(s): a bachelor's degree in mass communication from an institution in the Philippines; a bachelor's degree in English Language and Literature from an institution in Japan, and a Master of Arts in Communication from a U.S. university; a bachelor of arts in creative writing with a major in broadcasting and communications from the University of the Philippines; a bachelor's degree in the American and English languages from a university in Japan and a master of arts in education from a U.S. university. The petitioner asserts that it has 7,000 clients worldwide, and describes its organizational structure, which the Form I-129 indicates is comprised of 23 employees.

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 first 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*, 712 F. Supp. 1095, 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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel's assertion that the proposed position is analogous to a technical writer is not persuasive. The AAO finds that the proposed duties and supporting evidence reflect that the offered position resembles a public relations specialist as that occupation is depicted in the *Handbook*. The *Handbook* reports the following about a public relations specialist:

An organization's reputation, profitability, and even its continued existence can depend on the degree to which its targeted "publics" support its goals and policies. Public relations specialists—also referred to as *communications specialists* and *media specialists*, among other titles—serve as advocates for businesses, nonprofit associations, universities, hospitals, and other organizations, and build and maintain positive relationships with the public. As managers recognize the importance of good public relations to the success of their organizations, they increasingly rely on public relations specialists for advice on the strategy and policy of such programs.

Public relations specialists handle organizational functions such as media, community, consumer, industry, and governmental relations; political campaigns; interest-group representation; conflict mediation; and employee and investor relations. They do more than "tell the organization's story." They must understand the attitudes and concerns of community, consumer, employee, and public interest groups and establish and maintain cooperative relationships with them and with representatives from print and broadcast journalism.

Public relations specialists draft press releases and contact people in the media who might print or broadcast their material. Many radio or television special reports, newspaper stories, and magazine articles start at the desks of public relations specialists. Sometimes the subject is an organization and its policies toward its employees or its role in the community. Often the subject is a public issue, such as health, energy, or the environment, and what an organization does to advance that issue.

Public relations specialists also arrange and conduct programs to keep up contact between organization representatives and the public. For example, they set up speaking engagements and often prepare speeches for company officials. These media specialists represent employers at community projects; make film, slide, or other visual presentations at meetings and school assemblies; and plan conventions. In addition, they are responsible for preparing annual reports and writing proposals for various projects.

In government, public relations specialists—who may be called press secretaries, information officers, public affairs specialists, or communication specialists—keep the public informed about the activities of agencies and officials. For example, public affairs specialists in the U.S. Department of State keep the public informed of travel advisories and of U.S. positions on foreign issues. A press secretary for a member of Congress keeps constituents aware of the representative's accomplishments.

In large organizations, the key public relations executive, who often is a vice president, may develop overall plans and policies with other executives. In addition, public relations departments employ public relations specialists to write, research, prepare materials, maintain contacts, and respond to inquiries.

People who handle publicity for an individual or who direct public relations for a small organization may deal with all aspects of the job. They contact people, plan and research, and prepare materials for distribution. They also may handle advertising or sales promotion work to support marketing efforts.

The record contains samples of the documents produced by the petitioner's technical publications writer/researcher(s) such as press releases in the English and Japanese languages, newspaper articles, newspaper advertisements, website information, and company brochures. As described above, public relations specialists develop such materials. The petitioner's statement that the beneficiary "will assist in the research, preparation and development of factual speeches to be used by our immigration lawyers" also depicts the beneficiary's duties as within the purview of a public relations specialist.

The *Handbook* indicates that a public relations career does not require a baccalaureate degree in a specific specialty. It states:

There are no defined standards for entry into a public relations career. A college degree combined with public relations experience, usually gained through an internship, is considered excellent preparation for public relations work; in fact, internships are becoming vital to obtaining employment. The ability to communicate effectively is essential. Many entry-level public relations specialists have a college major in public relations, journalism, advertising, or communication. Some firms seek college graduates who have worked in electronic or print journalism. Other employers seek applicants with demonstrated communication skills and training or experience in a field related to the firm's business—information technology, health, science, engineering, sales, or finance, for example.

Thus, based on the *Handbook's* information, the offered position, which resembles a public relations specialist, would not require a bachelor's degree in a specific specialty.

The position evaluation from Assistant Professor [REDACTED], Ph.D. of Trustforte Corporation states that among other duties the beneficiary will "collect, analyze, and catalog pertinent information, generating summaries of research findings, and providing management with recommendations as to professional initiatives, legal programs and services, and general, immigration-specific business operations." The AAO finds that the statement from Assistant Professor [REDACTED] that the beneficiary will provide "management with recommendations as to professional initiatives, legal programs and services, and general, immigration-specific business operations" is not encompassed within the job duties as described by the petitioner. As described by the petitioner, the beneficiary will be primarily engaged in writing for the general public and, secondly, developing and maintaining the library. Thus, the AAO does not find that the job description that Assistant Professor [REDACTED] uses upon which to base his conclusion that the offered position requires "bachelor's-level educational training in business administration, business management, or a related field," has an adequate factual foundation. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way

questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Assistant Professor [REDACTED] evaluation of the proposed position, therefore, carries diminished weight in establishing the proposed position as a specialty occupation.

The *Occupational Information Network OnLine (O\*NET OnLine)* describes the technical writer as interviewing “production and engineering personnel and reviewing manufacturer’s and trade catalogs and drawings relating to equipment. These duties are not performed by the beneficiary. Furthermore, neither the specific vocational preparation (SVP) rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require. Thus, this information fails to establish the offered position as a specialty occupation.

The submitted prevailing wage request from the Employment Development Department of the State of California indicates that based on the Occupational Employment Statistics (OES) All Industries survey the offered position is a technical writer. However, based on the evidence in the record and the petitioner’s description of the proposed duties, the AAO finds that the offered position resembles a public relations specialist as that occupation is described in the *Handbook*. The AAO observes that the occupational code of 27-3042 in the list of SOC occupations published by the OES, which is for the technical writer, describes this occupation as “[w]rite technical materials, such as equipment manuals, appendices, or operating and maintenance instructions. May assist in layout work.” The 27-3042 occupational code, therefore, is not consistent with the beneficiary’s duties as the beneficiary will not write technical materials such as “equipment manuals, appendices, or operating and maintenance instructions.”

The AAO’s conclusion, from the various evidence to which it has referred, is that the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submits information regarding [REDACTED] and [REDACTED]. This evidence is not persuasive, however. The submitted information does not describe the size of [REDACTED] and [REDACTED] thus, the AAO cannot determine whether they are similar in size to the petitioner. Although the petitioner maintains that size is irrelevant in establishing the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the AAO disagrees as the language of the regulation states that the specific degree requirement must be common to the industry in parallel positions among organizations that are similar to the petitioner. The size of the companies in the postings, consequently, is relevant in determining their similarity to the petitioner. Furthermore, the hiring requirements of two employers, [REDACTED] and [REDACTED] is insufficient to establish an industry-wide requirement of requiring a bachelor’s degree in business, English, journalism, or communications for the proposed position. As such, the submitted evidence fails to establish that a specific

degree requirement is common to the industry in parallel positions among organizations similar to the petitioner.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier in this decision, the duties of the proposed position reflect those of a public relations specialist, which the *Handbook* reveals is an occupation that does not require a baccalaureate degree in a specific specialty. The evidence, including the position evaluation from Assistant Professor [REDACTED] and the samples of the work product of the petitioner's technical publications writer/researcher(s), fail to establish that the offered position has the complexity or uniqueness so as to require a baccalaureate degree in a specific specialty.

To establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), that the petitioner normally requires a degree or its equivalent for the position, the petitioner submits a list of former and current employees. The list indicates that former employees held a bachelor's degree or a master's degree, or both, in fields such as mass communication, English language and literature, communication, creative writing with a major in broadcasting and communications, and the American and English languages. Nevertheless, the petitioner's creation of a position with a bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. 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 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position or 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.<sup>1</sup> To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. The petitioner asserts that the offered position requires a bachelor's degree in business, English, journalism, or communications. The requirement of a bachelor's degree in business, the AAO notes, is unrelated to fields of English, journalism, or communications majors. Nevertheless, based on the description of the offered position, the evidence in the record, and the *Handbook's* information, the AAO finds that the petitioner has not established that the offered position would require a bachelor's degree in business, English, journalism, or communications.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The samples of the work product of the

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<sup>1</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

petitioner's technical publications writer/researcher(s) are representative of the work produced by a public relations specialist. Given the generalized nature of the content of the work product, which consists of newspaper articles describing the work of the petitioner and monthly mailings, flyers, and brochures providing a brief overview of U.S. immigration law, the AAO finds that the beneficiary would not need a specialized and complex knowledge of communications, business, English, journalism, or immigration law in order to perform the offered position. Thus, based on the evidence of record, the petitioner fails to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 on this ground.

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.