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FEB 26 2007

FILE: WAC 04 222 51071 Office: CALIFORNIA SERVICE CENTER Date:

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, Chief
Administrative Appeals Office

DISCUSSION: The service center director 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 Chinese newspaper publisher and seeks to employ the beneficiary as a journalist. The petitioner 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 finding that the petitioner misrepresented the number of employees it employed on the Form I-129 petition. Specifically, the petitioner indicated on the petition that it had 14 employees. The quarterly wage and withholding reports submitted by it for the state of Nevada, however, indicated that the petitioner had only two or three employees. The director then determined that all evidence provided by the petitioner was incredible and insufficient to establish that the petitioner has been, and will actually be employing the beneficiary in the described position, and that the beneficiary was, accordingly, ineligible for classification as an alien employed in a specialty occupation. On appeal, counsel provided additional information and stated that the proffered position qualifies as a specialty occupation and that the petition should be approved.

Counsel submitted, on appeal, documentation which indicates that the petitioner has employees and independent contractors in three different states which contribute to its newspaper operations. The petitioner provided an "employee" list of 14 individuals with supporting documentation establishing the method of compensation for those individuals. The documentation submitted adequately addresses the director's concerns and establishes a reasonable explanation for the number of "employees" listed by the petitioner on the Form I-129 petition. As such, the director's decision is withdrawn.

The next issue to be considered is whether the proffered position is a specialty occupation.

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), provides, in part, for the classification of qualified nonimmigrant 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.

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

[A]n 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 are 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a journalist. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Gather news from various sources and conduct interviews with foreign visitors attending conventions and exhibitions;
- Report the views of those attending conventions and exhibitions and provide an interpretation of events witnessed;
- Interview members of the local Chinese community to obtain opinions, reflections on various topics of news, and happenings from the Far East; and
- Report on local current events and draft news articles for approval and preparation for publication by the editorial staff.

The petitioner does not state that it requires a degree in any specific specialty for entry into the proffered position, but finds the beneficiary qualified for the position by virtue of her bachelor’s degree in business administration/management information systems from the University of Nevada, Las Vegas.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those performed by news analysts, reporters, and correspondents as described in the *Handbook*. The *Handbook* states that most employers prefer individuals with a bachelor's degree in journalism or mass communications, but some hire graduates with other majors. Employers state that practical experience is the most important part of education and training. The petitioner also submitted labor market information from the California Employment Development Department (CEDD) which states that a four-year degree is the minimum educational requirement for newspaper reporters. CEDD notes that smaller papers prefer generalists rather than specialists with regard to degree preference. Thus, while the record establishes that most employers prefer a college degree in journalism or mass communications, others seek individuals with a degree that is general in nature, such as one of the liberal arts. The petitioner has not established that a bachelor's degree in a specific specialty is normally the minimum requirement for entry into the proffered position. Employers requiring degrees find acceptable degrees in a wide range of academic fields. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner does not state that a degree in a specific specialty is common to the industry in parallel positions among similar organizations, or that it normally requires a degree in a specific specialty for entry into the proffered position, and offers no evidence in this regard. The petitioner has not established the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

The petitioner has not established that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty, or that they are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner states that it was organized in 2002 to provide news and information to the Chinese community in the western United States. The petitioner states that its newspaper has attained a circulation level of 40,000 copies per week, but it offers no evidence to substantiate that claim. Simply going on the 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 190 (Reg. Comm. 1972)). The petitioner did provide a copy of the newspaper, but it is written in Chinese and no translation was supplied so it is not possible for the AAO to review the articles and reporting prepared by the beneficiary, and precludes the AAO from assessing the uniqueness or complexity of the work being done by the beneficiary. The petitioner has failed to provide any evidence to establish that the nature of the work being done by the beneficiary requires a degree in a specific specialty, such as a degree in journalism or mass communications, rather than a degree and/or experience in any number of disciplines. The petitioner has not established the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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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 and the appeal shall accordingly be dismissed.

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