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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

APR 25 2005

FILE: WAC 03 089 54079 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

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 newspaper company that seeks to employ the beneficiary as a newspaper reporter. 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, counsel submits a brief.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 newspaper reporter. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company 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 investigating leads about new high-tech developments and their relationship to business development in Hawaii; interviewing people; taking photographs and observing computer development at various businesses; reading articles pertaining to computer development; organizing materials and writing stories; and presenting stories to the editor for final approval and print. The stories will be written, the petitioner states, in the Korean language. The petitioner asserts that the proposed position requires a bachelor's degree, and that the beneficiary is qualified for the position based on his bachelor's degree in computer science and bachelor of science in engineering.

Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the proffered position is similar to a reporter. The director stated that although a baccalaureate level of training is preferred for a reporter, it is not a normal, industry-wide minimum requirement for entry into the occupation. The proposed duties and stated level of responsibility, the director stated, do not indicate complexity or authority that is beyond what is normally encountered in the occupational field. According to the director, the evidence of record is not persuasive to show that the job offered could not be performed by an experienced person whose educational training falls short of a baccalaureate degree.

On appeal, counsel states that the director misconstrues the *Handbook* because it reveals that a bachelor's degree is required, not preferred, for a reporter. Counsel refers to the *Handbook's* section, which discusses the training, other qualifications, and advancement of reporters. According to counsel, the *Handbook* states that most employers prefer persons with a bachelor's degree in journalism, but some hire graduates with other majors. This indicates, counsel asserts, that a bachelor's degree is required, not preferred, and that employers hire persons with a bachelor's degree in journalism or other majors.

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.

A review of the *Handbook* discloses that the duties of the proffered position resemble those performed by a reporter who primarily covers the field of business. The *Handbook* reports that:

> Most employers prefer individuals with a bachelor's degree in journalism or mass communications, but some hire graduates with other majors. They look for experience on school newspapers or broadcasting stations and internships with news organizations. Large-city newspapers and stations also may prefer candidates with a degree in a subject-matter specialty such as economics, political science, or business. Some large newspapers and broadcasters may hire only experienced reporters.

The crux of the passage is the term "prefer." Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(l), defines the term "specialty occupation" as an occupation that *requires* theoretical and practical application of a body of highly specialized knowledge, and the 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 *Handbook* relays that most employers prefer individuals with a specific degree for a job as a reporter. The terms "prefer" and "require" are not synonymous; they do not express a similar meaning. In *Roget's II, The New Thesaurus*, the term "prefer" means to show partiality toward (someone); the term "require" means to have as a need or prerequisite. In light of the material differences between the terms, a *preference* for a bachelor's degree in journalism or mass communications would not satisfy the Act's definition of a specialty occupation, which is an occupation that *requires* the attainment of a bachelor's degree in the specific specialty (or its equivalent). Consequently, the *Handbook's* passage about the preference of a bachelor's degree in journalism or mass communications is insufficient to establish that such degrees are normally the minimum requirement for the proposed position.

Counsel's reference to bachelor's degree programs in journalism that are offered by colleges, universities, and community and junior colleges is not persuasive. Degree programs offered by educational institutions do not dictate the educational requirements that employers expect of candidates, though such programs may influence their requirements.

No evidence in the record satisfies the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proposed position is so complex or unique that it can be performed only by an individual with a degree. Although the petitioner's November 6, 2003 letter states that it is the "norm for reporters in all the communication medias [sic] to have obtained the minimum of a bachelor's degree," no documentary evidence substantiates this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in

these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, as discussed above, the *Handbook* reveals that employers do not require reporters to possess a bachelor's degree in a specific specialty.

No evidence satisfies 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.

No evidence in the record satisfies the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*), which 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. As described by the petitioner, the beneficiary's duties lack specificity and do not indicate a scope and complexity that would require baccalaureate-level education. And, as already discussed in this decision, the *Handbook* discloses that employers do not require a bachelor's degree in a specific specialty for a reporter.

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.

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.