U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

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JAN 21 2005

FILE: WAC 02 225 50299 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:

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.

for Michael T. Kelly
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: 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 with seven full- and part-time employees with a department that specializes in immigration law oriented toward Japanese nationals seeking either to come to the United States or to do business here. The firm seeks to employ the beneficiary as a newsletter/Web site editor and writer for a period of three years. The director determined the petitioner had not established that the proffered position is 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).

On appeal, counsel submits a brief and additional documentation.

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:

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

an 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.

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; (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Evidence of the beneficiary's duties includes: the I-129 petition; and the petitioner's June 4, 2003 letter in response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail:

- Research topics of interest to the petitioner's clientele, such as changes in international trade law, government policy, and immigration law;
- Edit articles of interest to the petitioner's clientele that she selects from her research or that lawyers in the petitioner's firm write;
- Arrange the layout of articles for publication in the petitioner's newsletter and the petitioner's Web site(s);
- Translate articles into Japanese specifically for Japanese clientele for Japanese Web site.

The petitioner indicated that a qualified candidate for the job would possesses a bachelor's degree in liberal arts with an emphasis on fluency in writing in both English and Japanese; computer skills; and international relations.

The director found that the proffered position was not a specialty occupation, based upon the above-mentioned job duties, which he found fit those of writers and editors or desktop publishers as described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*), 2002-2003 edition. He determined from the *Handbook* that a baccalaureate degree or its equivalent in a specific specialty was not a minimum requirement for entry into the position. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner is acting as its own counsel and asserts that the proffered position most resembles that of a technical writer or editor and, based upon the *Handbook,* states that the proffered position "requires a liberal arts degree and/or education in the particular field that the publication covers."

Counsel's statement on appeal is not persuasive. CIS does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the proffered position combined with the nature of the petitioning entity's business operations are factors that CIS considers. In the initial Form I-129 petition, the petitioner described the duties of the offered position as follows: to write and update Web pages and newsletters, including writing her own copy or selecting from among the

articles submitted by lawyers in the petitioner's firm, all with a view toward promoting the petitioner's business with existing clientele; arranging layout of material for publication in newsletters and Web sites; updating Web site material.

The petitioner has failed to establish that any of the four factors enumerated for a specialty occupation are present in this proceeding.

The AAO turns first to 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. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the *Handbook* requires a bachelor's degree or its equivalent in a specialized field, whether for the various positions of writing, technical writing, editing or desktop publishing. Although the *Handbook* indicates that many entry-level writers and editors have a college major in English, journalism, or communications, other employers seek applicants with demonstrated communication skills and training or experience in a field related to the firm's business such as business practices, international relations, trade relations or immigration law. No evidence in the record or in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, in a specific specialty related to the position, is required for the position.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*2*).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states that all of the petitioner's employees hold degrees, including the person who the beneficiary would replace. The record, however, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent,

in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 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.

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.