

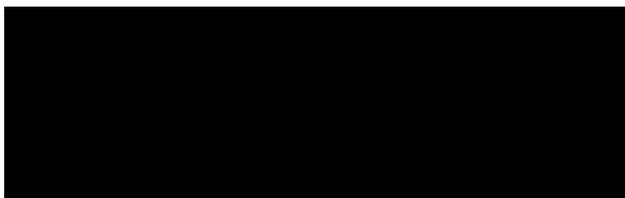
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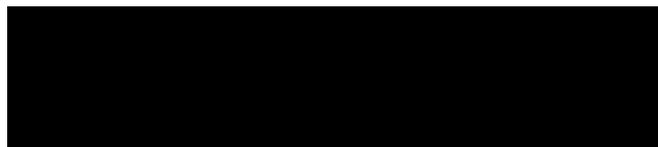


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 24 2005

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 materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is an advertising agency. It seeks to employ the beneficiary as a bilingual copywriter 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 ground that the proffered position does not qualify as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as an advertising firm established in 1995, with eight employees and gross annual income of \$3.2 million in 2002, that caters to the Korean-American market in the Greater Los Angeles area. The petitioner stated that it proposed to hire the beneficiary as a bilingual copywriter to lead its Korean advertising section. The duties of the position, and the percentage of time required by each duty, were described in detail by the petitioner in its subsequent response to the RFE, and summarized by counsel as follows:

Copywriting – 50%

- Research of the client's current market, intended market, advertisement history, demographical segments, product marketing, purchasing patterns, pattern of change of trends, and related analysis for incorporation into advertisement copy.
- Interact with client's marketing directors, public relations representatives for company's research and past germane history.
- Based upon analysis of relevant research, create an original idea for intended scripts.
- Edit and revise ad copy in accordance with production demands, client approval or personally motivated revisions.

Advertisement Production – 30%

- Accompany creative team through the production process.
- Assist in creation of storyboards or ad layout.
- Creative input for enriching the process with the original ideas enclosed in the ad copy.
- Continuous revision of dialogue or bylines in accordance with director's or graphic designer's input.

Customer / Client Relations – 15%

- Process of research to be conducted with client involvement, interact with company representatives (marketing department, public relations personnel, product development) regarding study of patterns in all aspects of consumer behavior.
- Guide client through the approval process for ad copy to complete product.
- Provide updates to contact persons regarding the progress of advertisement production and completion.

Reporting and Weekly Meetings – 5%

- Responsible for providing detailed information regarding a project's progress, especially during early stages.
- Report progress during production stage in cooperation with creative director, art director, and other relevant project members.
- Responsible for memos pertinent to company contribution and customer satisfaction.

The petitioner asserted that the minimum educational requirement for the position was a baccalaureate degree in communications, journalism, English, or the equivalent, and that the beneficiary was qualified to perform the job by virtue of her bachelor's degree in English and master's degree in communications. The record confirms that the beneficiary, a native of South Korea, earned two degrees at Korea University – including a bachelor of arts from the College of Education, Department of English Language Education, in February 1988, and a master of arts from the Department of Advertising and Public Relations, majoring in telecommunications, in February 2000.

Based on the duties described by the petitioner the director determined that the proffered position fit within the occupational category of writers and editors, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. According to the *Handbook* a baccalaureate degree in a specific specialty is not a normal, industry-wide minimum requirement for entry into that occupation. The director found that the evidence of record did not indicate that the petitioner normally required applicants for the position to have a specialty degree, or that the duties and responsibilities of the position were beyond the scope of those normally encountered in the field. In the director's view, the record failed to show that the job could not be performed by an experienced individual without a baccalaureate level educational training. The director concluded that the proffered position did not meet any of the criteria of a specialty occupation enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel argues that the director erred in finding that the proffered position is not a specialty occupation. According to counsel, the evidence of record, supplemented by some additional materials submitted in support of the appeal, establishes that the proffered position qualifies as a specialty occupation under all four of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

As indicated in the *Handbook*, 2004-05 edition, at page 275, writers and editors work in a broad range of businesses including newspapers, periodicals, book publishers, radio and television broadcasters, software publishers and other computer-related services, film and sound recording companies, advertising firms, educational institutions, government agencies, and other organizations. Reflecting the wide range of organizations in which they work, writers and editors are hired with a variety of educational backgrounds. As explained in the *Handbook, id.*, at 276:

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 legal issues, additional background in the chosen field is expected. Knowledge of a second language is helpful for some positions.

Counsel argues that this excerpt from the *Handbook* supports its assertion that writers require a specialty degree to enter the occupation. The AAO does not agree. While most employers may prefer degrees in communications, journalism, or English, the *Handbook* indicates that a broad range of liberal arts degrees could be suitable for a writing position. The AAO concludes, therefore, that a baccalaureate degree in a specific job-related specialty is not the normal minimum requirement for entry into a writing position.

Thus, the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

With respect to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record does not establish that a baccalaureate degree in a specific specialty is common to the industry in parallel positions among similar organizations. The record includes a series of internet job announcements for copywriters, most of which require applicants to have a baccalaureate degree. Consistent with the *Handbook's* description of the various academic degrees suitable for such positions, the announcements identify a wide range of acceptable degrees in such fields as English, journalism, communications, marketing, advertising, and public relations. A few simply state that a bachelor's degree is required, without naming any disciplines. Several of the job listings state that relevant work experience can substitute for a bachelor's degree. Thus, the internet job announcements are not persuasive evidence of a common industry standard requiring copywriters to have a baccalaureate degree in a specific specialty. Nor does the record show that the proffered position in this case is so complex or unique that it can only be performed by an individual with a baccalaureate degree in a specific specialty. Accordingly, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), counsel asserts that the bilingual copywriter position was previously filled by another South Korean who had a bachelor of arts degree in Korean language and literature from Yonsei University. The record includes that individual's academic transcript and three approval notices from the former Immigration and Naturalization Service (INS) granting the individual H-1B status to work for the petitioner during the six-year time period of November 15, 1995 to November 14, 2001. To qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) the petitioner must establish that its degree requirement is compelled by the performance demands of the position. The critical issue is not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000). The record does not establish that the duties of the bilingual copywriter position at issue in this case require a bachelor's degree in a specific specialty. Accordingly, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The previous INS approvals would have been erroneous if H-1B status was granted for temporary employment in the bilingual copywriter position. CIS is not required to approve petitions when eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the petitioner's record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Moreover, the AAO is never bound by a decision issued by a service center or a district director. *See Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Only published precedent decisions are binding on all CIS employees in the administration of the Act. *See* 8 C.F.R. § 103.3(c).

Finally, the proffered does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the bilingual copywriter are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate degree in a specific specialty. The only aspect of the job which is more specialized and complex than that of other copywriters is the use of the Korean language. The knowledge required to perform the Korean-language aspects of the job, however, is typically acquired (as in the beneficiary's case) by growing up in Korea and learning the language as a mother tongue, not by earning a baccalaureate or higher degree in an educational institution. Aside from the Korean language requirement, the AAO is not persuaded that the duties of the proffered position, as described by the petitioner, exceed the scope of those typically encountered in the occupational field. Since a copywriter does not require a baccalaureate degree in a specific specialty and Korean language fluency likewise does not require baccalaureate level knowledge in a specific specialty, the AAO concludes that the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record fails to demonstrate that the proffered position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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