

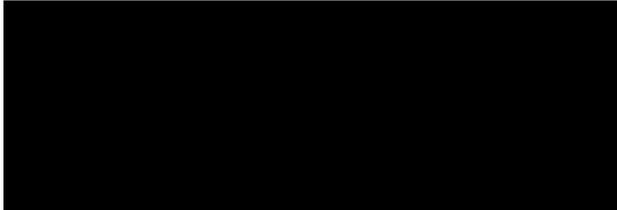
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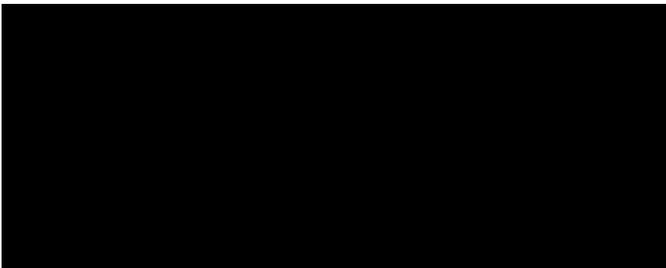


FILE: WAC 04 089 51455 Office: CALIFORNIA SERVICE CENTER Date: OCT 27 2005

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 documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

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 Japanese publisher in California. It seeks to hire the beneficiary as a journalist/writer. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and new and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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:

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.

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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner states that it is seeking the beneficiary's services as a journalist/writer. Evidence of the beneficiary's duties includes: the Form I-129; and a February 10, 2004 letter from the petitioner and counsel's response to the director's request for evidence.

At the time of filing, the petitioner stated that the beneficiary's duties entail: utilizing communications and journalistic principles, collecting and analyzing information about various topics to write articles for publication in the petitioner's guide and other publications as required; gathering and verifying factual information regarding articles through interviews, observation, and research; performing research process which includes reporting, analyzing, and interpreting facts, events, and other useful information for readers including Japanese-American, Japanese business people, recent immigrants, Japanese related business, tourists and other Asians and Americans; collecting and analyzing information about newsworthy events to write articles for publication; receiving assignment and evaluating topics and article tips to develop story idea; organizing material, determining emphasis, and writing articles according to editorial style and format standards; assisting in selecting and preparing material for publication; conferring with editors and staff to formulate policy, coordinating department activities, establishing production schedules, solving publication problems, discussing makeup plans and departmental changes; assisting in determining theme of issue and gathering material; securing graphic material from picture sources and conferring with artists and photographers to produce pictures and illustration. The petitioner indicated that the proffered position requires a college level education in communication, journalism or a related field.

The director requested a more detailed description of the work done, including specific job duties. The director requested an explanation of why the work done requires the services of a person who has a college degree or its equivalent in the occupational field. The director noted that the submitted evaluation was insufficient. The director requested a foreign education evaluation. The director requested a copy of the petitioner's organizational chart and a copy of its business license.

In response, the petitioner submitted a foreign degree evaluation, which indicated that the beneficiary has the equivalent of a bachelor's degree in communications from an accredited U.S. university or college. The petitioner referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) as indicating that employers prefer individuals with a bachelor's degree in journalism, but sometimes bachelor's degrees in other majors are acceptable. The petitioner stated that it normally requires a degree or its equivalent for the proffered position and has a history of hiring persons with a bachelor's degree or higher in communication, journalism, or English. The petitioner submitted an organizational chart which indicated a journalist with a bachelor's degree in communication, an Editor-in-Chief with a master's degree in communications and a staff writer with a bachelor's degree in Asian studies. The petitioner asserted that the proffered position qualifies as a specialty occupation under the third criterion in that the degree is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Additionally, the petitioner submitted an opinion letter in support of its contention that the proffered position's specific duties are so specialized and complex that knowledge to required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The director denied the petition. The director noted that an analysis of the proposed duties revealed that the job offered is similar to the job of Writers and Editors as described in the *Handbook*. The director noted that the *Handbook* states:

Communicating through the written word, writers and editors generally fall into one of three categories. *Writers and authors* develop original fiction and nonfiction for books, magazines, trade journals, online publications, company newsletters, radio and television broadcasts, motion pictures, and advertisements. . . . *Technical writers* develop technical materials, such as equipment manuals, appendices, or operating and maintenance instructions. They also may assist in layout work.

The director noted that the educational requirements as listed in the *Handbook* for the position are:

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.

The director determined that a baccalaureate level of training is not a normal industry-wide minimum requirement for entry into the occupation and therefore the proffered position is not a specialty occupation. The director stated that the record failed to establish that a degree in a specific field of study is common to the publishing industry in parallel positions among similar organizations. Additionally, the director determined that the petitioner had not submitted sufficient documentation to show that this position involved duties seen as either unique or complex so that only an individual with a degree in a specific specialty could perform them. Furthermore, the director noted that the record contained no corroborating documentation that the petitioner has hired persons with degrees for the proffered position, such as employment records of the listed individuals as evidence of their previous employment with the petitioner. The director noted that the position does not require a degree in a specific specialty merely because the employer may have required a degree in the past. To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. 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 (5th Cir. 2000). The critical element is not the title of the position nor 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. Finally, the director concluded that there is insufficient documentation in the record to establish that the 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. The director found that the beneficiary is ineligible for classification as an alien employed in a specialty occupation.

On appeal, counsel asserts that the director failed to consider the expert opinion letter. Counsel asserts that the director indicated that the petitioner must satisfy all four criteria instead of meeting just one criterion. Counsel contends that the petitioner has demonstrated that the proffered position satisfies more than one of the criteria.

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 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*, 812 F. Supp. 872, 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.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position resemble those of a writer found under the occupation of writer and editor, as noted by the director.

The petitioner fails to establish the first criterion because the *Handbook* states that some employers look for a broad liberal arts background but most prefer to hire people with degrees in communications, journalism, or English. Counsel contends that because the *Handbook* states "most employers prefer" this phrase indicates that a bachelor's degree in a specific major is the normal minimum requirement. Though the *Handbook* indicates that for those who specialize in a particular area such as fashion, business or legal issues, additional background in the chosen field is expected, the *Handbook* reveals that a bachelor's degree in a specific specialty is not required for a writer position. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on an opinion letter and internet job postings. Counsel contends that each employer listed in the job posting is a specialty market publisher and is similar to the petitioner. This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. The advertised positions are not parallel to the proffered position. Although some postings require a bachelor's degree in English, journalism or a related topic, several do not. The staff writer position for [REDACTED] indicates that the ideal candidate for this position will have an English or journalism degree or related work experience. This position does not require a degree in a specific specialty but will accept related work experience. The posting does not indicate the years of experience required so it is not possible to determine if the work experience is equivalent to a bachelor's degree as described by CIS regulations. The posting for a Newspoint Editor at Black Enterprise Magazine indicates that a BA/BS plus a minimum of three years experience is required. The posting does not specify

that the degree must be in a specific specialty. Likewise, the creative/communication writer for Roche healthcare indicates that a bachelor's degree and knowledge of health or life sciences industry is required. This posting does not indicate which area of study the degree must be in. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

As noted above, the petitioner submitted an opinion letter from Takenaka Executive Search LLC. The author of this letter asserts that that the "position of journalist is a specialty occupation within the meaning of immigration laws and regulations." The author indicated that his company has extensive expertise in employment evaluation, reviewing and analyzing job duties and requirements because it is involved in employment research consulting services. The author indicated that he used various reference manuals such as the William M. Macer Incorporated (employment reference manual) for verifying required qualifications. The author stated that he "contacted various executives and human resources managers in the industry to review the job description and requested their opinion regarding the position, and they have concurred that the position requires a bachelor's degree." The author also stated that his company has extensive employment materials in its databanks and used this data in its evaluation. The record does not contain evidence of the sources used by the author of the letter which could corroborate his statements. As discussed above, the *Handbook* states most employers prefer people with degree in communications, journalism or English, some employers look for a broad liberal arts background. The *Handbook* does not state that a degree in a specific specialty is required for the occupation. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the duties of the proffered position are performed by writers, a position that does not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish 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. Counsel asserts the petitioner has demonstrated past employment practices. Counsel refers to the director's statement that there is no corroborating information. Counsel states that the director had ample opportunity to request specific documentary evidence at the time of the request for evidence. Counsel refers to the petitioner's statements that the employer has a history of requiring at least a bachelor's degree in communications, journalism and English when hiring individuals for the position. The petitioner submitted no corroborating evidence on appeal. Going on 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 Dec. 190 (Reg. Comm. 1972)). Additionally, the AAO notes that the petitioner's organizational chart indicates a staff writer with a degree in Asian studies.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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. It cannot be concluded 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. Once again, the *Handbook* reveals that the duties of the proffered position are performed by a writer, an occupation not requiring a bachelor's degree in a specific specialty.

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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.