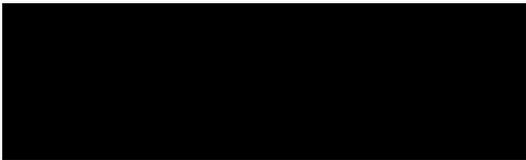




U.S. Citizenship
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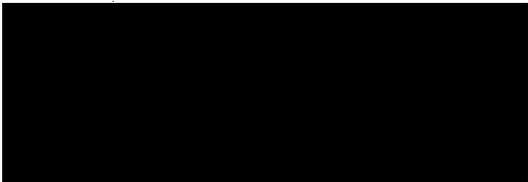


FILE: WAC 03 219 54110 Office: CALIFORNIA SERVICE CENTER Date: JUN 13 2005

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

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 weekly newspaper on matters of interest to the Chinese community. In order to employ the petitioner as a newspaper editor, 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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 requests for additional evidence; (3) the petitioner's responses to the director's requests; (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 an editor. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 10, 2003 letter in support of the petition; and the petitioner's responses to the director's requests for evidence. According to this evidence, the beneficiary would perform duties that entail: gathering information; preparing stories; examining, interpreting and publishing information to inform readers about local, state, national and international events; determining what material will appeal to readers; reviewing and editing drafts of reports and articles; offering comments to improve the work of reporters; suggesting possible titles for stories; organizing the material and determining its focus or emphasis; assisting in layout work; overseeing the production of the publications; investigating leads and news tips; interviewing local, national and international personalities and covering major local events; taking photographs; editing wire service copy; and writing editorials. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in journalism or a related field.

The director found that the proffered position was not a specialty occupation because it was most like a desktop publishing position, which the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports does not require a bachelor's degree in a specific specialty.

On appeal, counsel asserts that the director misinterpreted the duties of the position, and analyzed the position using the wrong position description in the *Handbook*. Counsel states that the Department of Labor's *Dictionary of Occupational Titles (DOT)* assigns the position of an editor an SVP category of 8 or 9, which indicates that a bachelor's degree is required for the position. Counsel also notes that the *Handbook* states, "A college degree generally is required for a position as a writer or editor."

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 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. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. 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 agrees with counsel that the position is not a desktop publisher. The duties of the position combine those of a reporter and editor. A review of the News Analysts, Reporters and Correspondents job description in the *Handbook* indicates that “[m]ost employers prefer individuals with a bachelor’s degree in journalism or mass communications, but some hire graduates with other majors.” The entry for Writers and Editors states, “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.” Neither of these entries indicates that a baccalaureate or higher degree, or its equivalent, *in a specific specialty* is required for the proffered position. Both entries state that some employers hire individuals with degrees outside of a specific specialty.

Counsel asserts that the *DOT* indicates that the proffered position is a specialty occupation. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

The petitioner did not submit any evidence regarding parallel positions in the petitioner’s industry. The record does not contain 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. The petitioner submitted two advertisements placed in its newspaper for the proffered position. These advertisements were published following the director’s request for evidence, which included a request for position announcements, including “classified advertisements soliciting for the current position.” It appears, however, that the advertisements were placed in response to the director’s request, which ensures that they include the information required to establish the position as a specialty occupation. The petitioner provided no evidence about its previous hiring practices, or the backgrounds of others who may have filled similar positions.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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. As noted above, the position description lacks detail about how the beneficiary would perform this position; 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. The petition is denied.