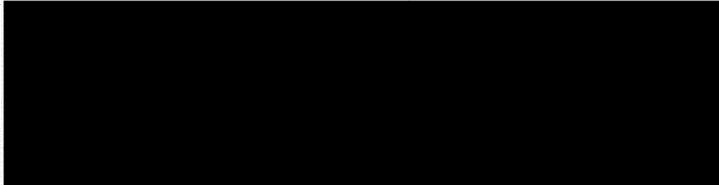


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FILE: WAC 04 243 50984 Office: CALIFORNIA SERVICE CENTER

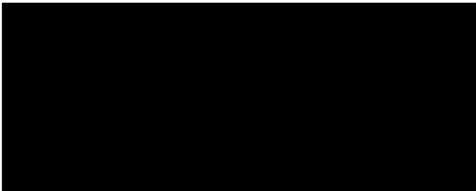
Date: NOV 22 2006

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, Chief
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 provides import and wholesale distribution of Asian foods. It seeks to employ the beneficiary as a copy writer. 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 finding that the proposed position is not a specialty occupation. Counsel submitted a timely appeal.

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 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 the appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a copy writer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties as follows:

- Gather information and background material in order to develop, write, and edit product catalogues, product labels and nutritional information, advertising and promotional materials, product news releases, and related technical information relating to Asian food products sold by the petitioner;
- Review trade catalogs, journals, reports, and other material and data relative to the Asian food industry to keep abreast of industry changes, trends, and new products in order to update and modify product catalogues, web sites, and published materials; report on written materials in need of modification and improve the content and appearance of published materials;
- Organize materials and complete writing assignments within time deadlines and according to set standards regarding order, clarity, conciseness, style, and terminology; and
- Select photographs, drawings, charts, diagrams, and other demonstrative materials to illustrate information about products and serving suggestions; write captions for photographs and promotional materials and incorporate material to make effective use and layout for publications.

The petitioner stated that the beneficiary will occasionally translate documents from the Japanese language into the English language and visa versa. For the proposed position the petitioner requires a bachelor's degree in business administration, economics, or a similar degree.

The director denied the petition. His decision stated that the proposed duties resemble those typically performed by a promotions manager as described in the 2004-2005 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), which conveys that a promotions manager does not require a bachelor's degree in a specific academic discipline. The director found the submitted job postings unpersuasive in establishing the offered position as a specialty occupation. The director stated that the petitioner does not have the organizational complexity to validate a position for a promotions manager and that no evidence showed the petitioner as normally requiring a degree or the equivalent in a specific specialty for the position. The director concluded that the petitioner satisfied none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the job description, the *Occupational Information Network (O*Net)*, the *Handbook*, the job postings from other companies, the recruitment company's information, and submitted evidence of the product catalogue and other materials reflect that the proposed position qualifies as a specialty occupation. Counsel asserts that the proposed position differs from a promotions manager in that a copywriter is engaged in writing, editing, and creating written material; a promotions manager uses the materials created by the copywriter for promotional programs.

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 2006-2007 edition of the *Handbook*, a resource that the AAO routinely consults, 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 record contains information from the *Dictionary of Occupational Titles (DOT)*. 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. A Specific Vocational Preparation (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. Thus, the *DOT's* information is not persuasive in establishing the proposed position as a specialty occupation.

The *Handbook* describes a copy writer as preparing "advertising copy for use by publication or broadcast media or to promote the sale of goods and services." It states the following about the training and qualifications of a copy writer:

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

Increasingly, technical writing requires a degree in, or some knowledge about, a specialized field—for example, engineering, business, or one of the sciences. In many cases, people with good writing skills can acquire specialized knowledge on the job. Some transfer from jobs as

technicians, scientists, or engineers. Others begin as research assistants or as trainees in a technical information department, develop technical communication skills, and then assume writing duties.

The AAO concurs with counsel's assertion that the proposed duties are those of a copy writer; however, it does not agree that the *Handbook* conveys that a copy writer must possess a bachelor's degree in a specific academic field. For this reason, the AAO finds that the offered position is not a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must show that a specific degree requirement is common to the industry in parallel positions among similar organizations. The record contains job postings seeking copy writers. The AAO notes that the companies seeking copy writers either differ in nature from the petitioner, a small company that provides import and wholesale distribution of Asian foods; or their nature is not disclosed in the posting. The job postings are from a medical education agency, a digital entertainment company, three interactive companies, a marketing agency, a membership company, and a sales promotions company; these companies are clearly different in nature from the petitioner. Eatelcorp INC and Affiliates, Grand Circle Corporation, and Walgreens are not described in their job postings; thus, the AAO cannot determine whether they are similar in nature to the petitioner. As such, the job postings fail to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that a specific degree requirement is common to the industry in parallel positions among similar organizations to the petitioner.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that the proffered position is so complex or unique that it can be performed only by an individual with a baccalaureate degree in a specific specialty. The submitted evidence of product catalogues and brochures for food items reveals that the advertising copy that the beneficiary will work on does not require technical, scientific, or specialized knowledge about food products. The product catalogue, for instance, shows the photograph of a food product and lists the name of a product, its product number, and quantity. Similarly, product brochures show a photograph of a product and offer a short description such as "The best soba/udon sauce. Made from the premium fish stock. Discover your favorite restaurant's secret TODAY" and "Came straight from the NO. 1 rice country!" The evidence in the record fails to establish that the proffered position has a complexity or uniqueness that would require baccalaureate-level knowledge in a specific academic specialty. The petitioner therefore fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is that the petitioner demonstrate that it normally requires a degree or its equivalent for the position.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The proposed duties are those of a copy writer, which the *Handbook* indicates does not require a bachelor's degree in a specific

academic discipline. The submitted product brochures and product catalogues, and other materials in the record are insufficient to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate degree in a specific specialty. As such, the petitioner fails to establish the criterion at 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 on this ground.

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.