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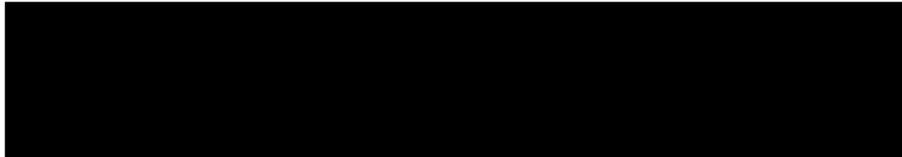
FILE: WAC 05 148 52162 Office: CALIFORNIA SERVICE CENTER Date: FEB 20 2007

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, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a non-profit religious organization. It seeks to employ the beneficiary as an editor for its "Touch Life Mission Magazine." Accordingly, 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).

On May 31, 2005, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner asserts the director erred when making his decision. The issue in this matter is whether the petitioner has established that the proffered position is a specialty occupation.

The record contains: (1) the Form I-129 filed April 26, 2005 and supporting documentation; (2) the director's May 5, 2005 request for further evidence (RFE); (3) the petitioner's May 16, 2005 response to the director's RFE; (4) the director's May 31, 2005 denial decision, and (5) the Form I-290B with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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.

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 seeks the beneficiary's services as an "editor." The record includes the following list of duties for the proffered position:

- Plan contents of the magazine according to the organization's Christianity nature, editorial policy, and publishing requirements (5%).
- Apply communication skill to confer with and persuade organization's management in determining theme, issue, and type of articles for each issue (5%).
- Utilize knowledge of educational philosophy and social studies teaching methods to develop and decide the story and contents idea for each issue by considering reader's appeal and comments (10%).
- Employ knowledge of administration and human resource management to assign topics to each staff and choosing the freelance writers according to the theme and story for each volume (10%).
- Utilize principles and knowledge of Christian and Theology to review, rewrite, and/or edit the articles submitted by staff or freelance writers for publication consideration (25%).
- Apply both Chinese and English language skill, and knowledge of editorial writing to translate, revise, and change the format of staff or freelance writers' articles from English to Chinese (10%).
- Proofread the articles' content and form to detect and correct errors (20%).
- Review and approve proofs prior to publication production, and oversee and organize publication production to meet the deadline and the organization's budget (10%).
- Establish contacts and working relationship with prominent writers and translators (5%).

The petitioner stated: "[s]ince the proffered position is the Editor of a Christian magazine with Christian educational purpose, this position requires a minimum Bachelor's degree in Christian Education and some experience in editorial tasks."

On May 31, 2005, the director denied the petition determining: that the beneficiary would not be performing the duties of an editor full-time for the requested three-year period; that the beneficiary would be performing translation duties and managing staff and freelance writers, duties that do not require a bachelor's degree or

higher in a specific specialty; that letters provided by representatives of businesses attesting to the requirement of a bachelor's degree for an editor position did not establish the individuals' qualifications to give such opinions; that the petitioner's description of the proffered position's duties did not establish the uniqueness or complexity of the position; that the petitioner had not established that it normally required a baccalaureate for the proffered position; and that the petitioner had not provided sufficient evidence to establish the specialized and complex nature of the offered job.

On appeal, counsel for the petitioner asserts the director erred when determining that the beneficiary would not perform the duties of a full-time editor. Counsel noted that the duties of translating and managing writing staff involved editorial duties. Counsel contends that the beneficiary's primary duty is to conduct the editorial tasks associated with the petitioner's bimonthly magazine, a monthly mini-magazine (newsletter), a weekly-published "e-letter," and a printout and translation of the petitioner's home page. The petitioner provided examples of the petitioner's magazines, newsletters, "e-letters," and home page. Counsel reiterates that the proposed editorial duties require the application of the principles and theory of Christian study, communication, and journalism to review, rewrite, and edit the work of other writers utilizing knowledge of educational philosophy and teaching methods to develop and decide the story, contents, and format of each issue. Counsel asserts that the job duties require the theoretical and practical application of a body of highly specialized knowledge in Christian studies and journalism.

The AAO agrees that the director erred when finding a part-time editorial position could not be a specialty occupation. The AAO finds that whether a position is part-time or full-time, it is the nature of the duties of the position in relation to the petitioner's business that determine if the position is a specialty occupation. The amount of time devoted to performing the position's duties does not lessen or increase the special nature of the position.

The AAO turns first to the Department of Labor's Occupational Outlook *Handbook's* (*Handbook*) discussion of the position of "editor" and its attendant educational requirements to determine whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The *Handbook* reports:

Editors examine proposals and select material for publication or broadcast. They review and revise a writers' work for publication or dissemination.

* * *

Editors review, rewrite, and edit the work of writers. They may also do original writing. An editor's responsibilities vary with the employer and type and level of editorial position held. Editorial duties may include planning the content of books, technical journals, trade magazines, and other general-interest publications. Editors also decide what material will appeal to readers, review, and edit drafts of books and articles, offer comments to improve the work and suggest possible titles. In addition, they may oversee the production of the publications.

* * *

In smaller organizations, such as small daily or weekly newspapers or the membership or publications departments of nonprofit or similar organizations, a single editor may do everything or share responsibilities with only a few other people.

Regarding the educational requirements for a position of an editor, the *Handbook* indicates:

A college degree is generally 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.

The AAO has also reviewed the three letters submitted by representatives of other nonprofit religious organizations to determine whether the position requires a baccalaureate degree in a specific discipline in order to perform the position of an editor. The May 11, 2005 letter authored by a representative of Family Keepers, Inc. indicates that its position of full-time editor requires a bachelor's degree in Chinese literature as a minimum requirement for entry into the position. The May 11, 2005 letter authored by a representative of the Evangelical Formorsan Church Communication Center indicates that the organization's position of full-time editor must have a bachelor's degree in linguistics and literature as a minimum requirement. The third May 11, 2005 letter authored by a representative of Focus on the Family Chinese Outreach indicates that its organization requires its editor to have a bachelor's degree in Chinese literature and five years of experience.

The AAO determines, in this matter, that the petitioner has not provided sufficient evidence that the proffered position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). The description of the proffered position's duties borrows from the *Handbook's* general requirements for an editor and moreover, the *Handbook* does not report that a college degree in a specific specialty is a requirement for the position of an editor. Rather, the *Handbook* notes that although a college degree is generally required for a position as a writer or editor, a broad liberal arts background is sometimes sufficient, even though most employers prefer to hire people with degrees in communications, journalism, or English. The petitioner's requirement that the beneficiary have a college degree in Christian Studies, not in communications, journalism, or English corroborates that a degree in a discipline unrelated to that of journalism is acceptable in the position of magazine editor. Moreover, the authors of the three letters submitted to establish the necessity of a degree requirement in this position, require a degree in Chinese literature or in linguistics, not in journalism or Christian Studies.

The AAO acknowledges counsel's reference to the *Dictionary of Occupational Titles (DOT)* for the position of editor. However, the AAO does not consider the *DOT* to be a persuasive source of information as to

whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. *DOT* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. 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. Again, the record does not demonstrate that the occupation of editor would require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty.

The petitioner has not established the proffered position as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(1).

The AAO also finds that the petitioner has not established that the proposed duties qualify as a position that is identifiable with an industry-wide educational standard, or distinguishable, by its unique nature or complexity, from a similar but non-degree-requiring position. Turning to the three letters submitted by representatives of other nonprofit organizations, the AAO determines that the letters do not provide sufficient information to enable the AAO to conclude that the organizations' positions of "editor" are parallel positions to the proffered position. First, the AAO notes that the three organizations do not require their editors to have a degree in Christian Studies, as the petitioner requires for the proffered position. Moreover, the letters do not identify the specific job duties associated with the position of "editor" nor does the record contain evidence of the educational background of the employees hired for the position of editor for the other organizations. Going on the 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 190 (Reg. Comm. 1972)). The record is insufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Counsel for the petitioner asserts that the proffered position is complex and unique within the petitioner's industry, as the writers subordinate to the editor's position possess master's degrees. Counsel contends that without a bachelor's degree, it is almost impossible for an editor to edit, rewrite, revise, or even determine to reject the articles submitted by writers with such a high educational level. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record does not include documentary evidence that substantiates that the writers subordinate to the editor's position possess master degrees. Moreover, the petitioner does not distinguish the situation of subordinates having higher degrees from other editorial positions within the petitioner's industry. The record does not include evidence that the proffered position is more complex or unique than other like positions within the petitioner's industry that do not require a degree in a specific discipline. The petitioner has not explained how the proffered position is sufficiently different than other like positions within the industry so that the proffered position must be identified as requiring a bachelor's degree in a specific discipline. The petitioner has not satisfied the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record also fails to demonstrate that the petitioner has a history of recruiting and hiring degreed candidates for the proffered position. To determine whether the petitioner has fulfilled the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. The petitioner has not submitted any evidence that it has previously hired degreed individuals for this position. Moreover, the critical element is not the title of the position or 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. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in Christian Studies and journalism and, therefore, establish the proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). In this matter, the petitioner has provided sufficient documentary evidence that the duties of the proffered position are specialized and require a bachelor's degree in Christian Studies. The AAO notes that the description of the proffered position's duties although general is substantiated with copies of the petitioner's magazine, newsletter, and "e-letters." Moreover, the petitioner does indicate that the individual in the proffered position will spend 25 percent of her time utilizing principles and knowledge of Christian Studies and Theology to review, rewrite, and/or edit the articles submitted by staff or freelance writers for publication consideration. It is the technical educational background in a specific discipline, coupled with the general degree in journalism that demonstrates that the duties of the proffered position are sufficiently specialized to require knowledge usually associated with a four-year degree in a specific discipline. The petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has established that the proffered position is a specialty occupation. Accordingly, the AAO will reverse the director's denial of the petition.

The petition may not be approved, however, as the record does not establish that the beneficiary is qualified to perform the services of a specialty occupation. The record contains evidence of the beneficiary's foreign education in journalism and in Christian Studies and a master's degree in Pastoral Studies at a U.S. university; however, the record does not contain a credentials evaluation of the beneficiary's foreign educational credentials. Thus, the petition will be remanded for the director to determine whether the beneficiary is qualified to perform the services of a specialty occupation. The director must afford the petitioner a reasonable opportunity to provide an educational credentials evaluation and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's May 31, 2005 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.