U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship and Immigration Services

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[redacted]

Date: FEB 0 1 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Michael T. Kelly
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director 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.

On the Form I-129 visa petition the petitioner stated that it is an "import and wholesale distribution of women's apparel" firm. To employ the beneficiary in what it designates as a Corporate Writer position, the petitioner endeavors 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, finding that the petitioner failed to establish that it has made a credible offer of employment to the beneficiary. On appeal, counsel asserted that the director's basis for denial was erroneous, and that a *bona fide* position exists and has been offered to the beneficiary in good faith. In support of these contentions, counsel submitted a brief and additional evidence.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has made a credible offer of employment to the beneficiary.

With the visa petition, counsel submitted a letter, dated November 10, 2008, from the petitioner's vice president, who described the proffered position as follows:

> The primary duties of the Corporate Writer include the drafting, editing and formatting of product promotional materials, advertising materials, international correspondences [sic], and corporate documents. Specifically, [the beneficiary's] duties will include the following:
>
> 1. **Preparing promotional materials:**
> The Corporate Writer is primarily responsible for analyzing the garment products of individual clients as they relate to specific markets and retailers, and drafting insightful and strategic promotional and advertising materials that will best promote the clients' products. These materials often include product profiles and portfolios, presentations to high fashion retail companies seeking to purchase or distribute garments, and client-specific promotional news releases or articles. The daily duties of the Corporate Writer include writing, reviewing, and editing completed drafts of promotional and advertising materials, both in English and Korean, for accuracy and

consistency, and making changes to improve overall expression and vocabulary. The Corporate Writer will also ensure that the materials convey the desired messages and information.

2. **Preparing documents to facilitate international communications between manufacturers and retailers:**
In addition to drafting promotional materials, the Corporate Writer must prepare and edit business letters and proposals to facilitate international communications between [the petitioner] and [its] garment manufacturer clients in Asia, particularly in South Korea. The Corporate Writer must prepare reports for Korean garment manufacturers and contractors on a wide range of topics, including new fashion trends, innovative use of fabrics and colors, emerging markets, and new distribution opportunities.

3. **Edit, format and oversee publication of corporate materials:**
The Corporate Writer will edit, review, format and oversee the publication and distribution of articles, formal business proposals, public relations materials, corporate fact sheets, press releases and other promotional materials that will develop credibility and a favorable and polished image for [the petitioner's] product lines by utilizing a variety of media outlets. The Corporate Writer will assist in all speech writing, public presentations, and information programs, and will advise the marketing manager with regard to stories and "sound bites" to be included in promotional materials, trade fairs, and apparel industry reports.

In that letter, the petitioner's vice president stated:

> The petitioner's special need for a Corporate Writer with a minimum of a Bachelor's degree level of university education in foreign languages or a closely related field is driven by the complexity, importance, and professional nature of the position offered.

The petitioner's vice president further stated:

> [T]he Corporate Writer is called upon to produce writing that is of the highest quality, accuracy and effectiveness. This required understanding of effective literary techniques can only be acquired through four years of undergraduate education leading to a Bachelor's degree in foreign languages.

Counsel provided a transcript and diploma showing that the beneficiary was awarded a bachelor's degree with a major in Korean Language and Literature and a minor in English Language and Literature by [redacted] in Korea.

Counsel provided an evaluation of the beneficiary's credentials. Rather than stating that the beneficiary's Korean degree is equivalent to a U.S. bachelor's degree in foreign languages, however, that evaluation stated that the beneficiary's education and employment experience, taken together, are equivalent to a U.S. bachelor's degree in public relations. The AAO notes that the petitioner's vice president stated that the proffered position requires a bachelor's degree in foreign languages, not a degree in public relations.

Because the evidence submitted was insufficient to show that the visa petition is approvable, the service center, on April 4, 2009, issued a RFE in this matter. The service center requested additional evidence to show that the proffered position qualifies as a position in a specialty occupation, including a more detailed description of the position's duties and the minimum education, training, and experience necessary for the job. The service center also noted that the beneficiary had been working in the proffered position for the petitioner pursuant to a previously approved H-1B visa, and requested copies of work product created by the beneficiary.

Finally, the RFE states:

> **Job Title**: A recently check reveals that the beneficiary appears not working as a Corporate Writer as claimed in the [visa petition] and [LCA] but is that of a liaison in the field of product development as the beneficiary's business card claims. The business card also indicates that the beneficiary is a "product Development Manager" for a company called [redacted] Provide evidence about the discrepancies.

The record does not contain a copy of the beneficiary's business card identifying her as a Product Development Manager for [redacted] However, in subsequent correspondence, the petitioner's vice president appeared to confirm that the beneficiary had a business card identifying her as a Product Development Manager for [redacted] and did not have a business card identifying her as corporate writer or as any other type of employee for the petitioner.

Specifically, in response to the RFE, counsel provided a letter, dated April 17, 2009, from the petitioner's vice president. As to the reason the beneficiary had no business card identifying her as a corporate writer for the petitioner, the petitioner's vice president stated:

> The Corporate Writer position is mostly engaged in in-house activities and has regular contact via email, phone, or facsimile with already established vendors, suppliers, and customers. Therefore, we normally do not find it necessary for the Corporate Writer to possess or distribute formal business cards. Thus [the petitioner] did not find it necessary to provide [the beneficiary] with business cards since it would not be the best use of our company's resources.

As to the reason the beneficiary did have a business card identifying her as a Product Development Manager for [redacted] the petitioner's vice president stated:

> is our main vendor and our company has maintained a long and partnership-type relationship with Hence, our company allows to utilize services and perform tasks as needed on behalf of Therefore, . took the liberty, without our objection, to generate business cards with a job title of Product Development Manager, which describes her limited function and performance of services she provides to However, [the beneficiary's] primary job title and duties remain as Corporate Writer for our company.

The AAO notes that the description of duties that accompanied the visa petition did not include any duties related to product development. Further, the petitioner did not indicate that the beneficiary would be working for any other company, in whole or in part. Although the petitioner's vice president characterized the relationship between the petitioner and as "partnership-type," it did not otherwise describe that relationship or provide any documentary evidence pertinent to it. Further - and of significant impact against the petitioner's claim that the beneficiary would be employed as stated in the Form I-129 and the documents filed with it – the petitioner did not provide documentation from corroborating the petitioner's claims regarding the extent of the beneficiary's connection with that firm, and the petitioner did not provide evidence from its own business records and from the beneficiary sufficient to effectively rebut the information presented in the RFE and in the director's decision contradicting the petitioner's claim about the nature of the position for which the beneficiary was sought. 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)). 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).

Counsel also submitted various documents. Some of those documents are entitled Weekly Buyer News and are dated October 6, 2008 through November 24, 2009. They contain headings such as etc., suggesting that they contain news pertinent to those companies. Although they were apparently provided as examples of the beneficiary's writing, they contain no indication that the beneficiary wrote them. Further, the body of each of the paragraphs is in Korean, but were not accompanied by an English translation.

Any document containing foreign language submitted to the USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). Because the Weekly Buyer News sheets were submitted without the required translations, and because they have not been shown to relate in any way to the beneficiary, their contents shall not be considered.

Counsel also provided three catalogs entitled and subtitled Fall/Winter 2009, Holiday/Resort 2009, and Spring of 2010. Those catalogs contain the credit, "Written by [the beneficiary]." They consist almost entirely of photographs of women modeling clothing, but also have some captions, in English, such as "jersey head to toe," "harem pant," "cropped sweatshirt," "layered tissue jerseys," "rusting," and "asymmetry."

Counsel's own letter of April 27, 2009 provided a longer and more detailed description of the duties of the proffered position that differs markedly from both of the descriptions provided by the petitioner's vice president. Who generated the enhanced description of the duties of the proffered position contained in counsel's letter is not stated. Because the record of proceeding does not establish that anyone other than counsel authored that description of duties, it will not be considered. Again, the assertions of counsel not supported by documentary evidence will not satisfy the petitioner's burden of proof, and the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. For this reason, the AAO also accords no weight to the following statement by counsel:

> To fully and satisfactorily perform [the duties of the proffered position] requires a thorough knowledge of the composition, syntax, grammar, vocabulary and the skills of clear and effective writing. This knowledge and skill can only be acquired through four years of undergraduate education leading to a Bachelor's degree in foreign languages (English and Korean).

Counsel offered no evidence to support the novel assertion that composition, syntax, grammar, vocabulary, and clear and effective writing can only be learned during the acquisition of a minimum of a bachelor's degree or the equivalent in foreign languages.

The director denied the visa petition finding, as was noted above, that the petitioner had failed to demonstrate that the job offer in this case is a *bona fide* offer of to employ the beneficiary as a corporate writer for the petitioner. That decision stated:

> [A] USCIS investigative report reveals that the beneficiary is working in the home office inside the beneficiary's apartment in Los Angeles. The beneficiary claims that her day-to-day duties would be maintaining a relationship with both the buyer, (the beneficiary told the investigators that her biggest client is , and the vendors. Whenever the buyer needs something the beneficiary would find a vendor who can supply the materials and prices to the buyer. The beneficiary also said that she acts as a liaison between the two until the production is complete. The beneficiary said that in the course of being the "middleman" she does quality control and product development for the buyer.
>
> Since the day-to-day duties sounded nothing like those of a "Corporate Writer" as stated in the petition, the beneficiary was asked what her job title was. She said she was Communication Director." When informed that the petitioner had claimed in the

> petition that the beneficiary's job title was a "Corporate Writer," and her job duties did not seem to match the job duties described in the employer letter, the beneficiary did not appear to understand why she was being asked about it and did not seem to know what the petitioner had put in the petition regarding her title and work description. The beneficiary said she did write when the company needed her to, but that it was not something that she did all the time because there was not enough of that type of work to stay busy with.

Based on this evidence, the director found that no *bona fide* offer was made for the beneficiary to work for the petitioner as a corporate writer.

The AAO notes that the decision of denial was based, in large part, on an investigative report, some contents of which had never been revealed to the petitioner until they were used in the decision. The regulation at 8 C.F.R. 103.2(b)(16)(i) states that, except under circumstances not present here:

> If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by [USCIS] and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered . . . ."

Clearly, prior notice to the petitioner of the adverse evidence would have been appropriate, and none was provided. However, notice of the evidence relied upon was provided in the decision of denial. What remedy would appropriately cure the procedural defect, beyond the appeal process itself, is unclear. In any event, the issue of notice is now moot, as the petitioner has been informed of the adverse evidence, and providing an additional notice of the adverse evidence would serve no purpose. Further, as is shown below, the petitioner responded to that evidence on appeal. The AAO finds that the procedural error has thus been rendered harmless.

On appeal, counsel provided what purport to be translations of the previously described issues of Weekly Buyer News. Those translations contained no indication that the beneficiary wrote any portion of those periodicals and were not accompanied by a translator's certification that he or she is competent to translate from Korean into English as required by 8 C.F.R. 103.2(b)(3). Both because they have not been shown to be relevant to any material fact in this matter and because they were provided without the requisite certification, the contents of those purported translations will not be considered.

In the appeal brief, counsel stated that the finding that the job offer is not *bona fide* was made without an adequate understanding of the petitioner's business. Counsel asserted that the beneficiary would be working for the beneficiary as a corporate writer, but did not directly address the evidence, provided by the beneficiary, that she did not work as a corporate writer. Counsel stated that the beneficiary had worked, and would work, exclusively for the petitioner, but did not directly address the petitioner's vice president's admission that the petitioner provides the beneficiary to [redacted] to perform services for [redacted] Counsel stated, "We want to emphasize that [the beneficiary's] job

duties are that of Corporate Writer," but did not directly address the beneficiary's admission that her duties consist principally of providing liaison between vendors and buyers, and related quality control and product development; or her admission that writing is only a peripheral part of her job.

Counsel also provided a business card identifying the beneficiary as corporate writer for the petitioner, but provided no explanation for the fact that, at the time of her interview by fraud detection investigators, the beneficiary had business cards that identified her as an employee of but had no business cards identifying her as an employee of the petitioner. Given the petitioner's vice president's assertion that the beneficiary has no business need for business cards identifying her as an employee of the petitioner, the AAO finds that those business cards were produced for use as evidence on appeal.

Counsel provided a letter, dated August 6, 2009, from the petitioner's vice president. It states:

> [The beneficiary] has worked with on a regular basis. She usually consults with representatives to obtain information on their products and discuss the style and length of the drafts for promotional and advertising materials, which include and its products' profiles. Before publishing the advertising materials, [the beneficiary] always presents the materials to and discusses any changes that should be made in advertising copy.

It further states:

> The production of business cards was for the convenience for [the beneficiary] to obtain necessary products information from business partners and product suppliers. Since the approval of her H-1B visa petition in November 2006, [the beneficiary] has maintained her legal status and worked exclusively for our company as a full[-]time employee. She has never received any compensation from or other companies.

Counsel provided a letter, dated August 6, 2009, from the senior director confirming materially similar facts.

That the petitioner pays wages to the beneficiary is insufficient to demonstrate that the petitioner is the beneficiary's actual employer. Who assigns work to the beneficiary and supervises her performance of it are also important factors. The petitioner's vice president has conceded that assigns work to the beneficiary and passes judgment on the suitability of her performance of her tasks.

That the beneficiary, when she was interviewed by fraud detection investigators, possessed business cards representing her to be a communications director for and no business card to indicate that she works for the petitioner, coupled with her admission that she does little writing, demonstrate that the offer to work as a corporate writer for the petitioner is not a *bona fide* job offer. On appeal,

counsel and the petitioner's vice president reiterated the claim that the beneficiary would work as a corporate writer, but did not address the beneficiary's admission that she does not.

Again, the AAO finds that the director was correct in her determination that the record before her failed to establish that the petitioner has made a credible offer of employment to the beneficiary, and it also finds that the evidence and argument submitted on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the visa petition denied on this basis.

The record suggests additional issues that were not addressed in the decision of denial, but, nonetheless preclude approval of this petition. These issues are: (1) the petitioner's failure to establish the proffered position as a specialty occupation , and (2) the deficiency of evidence regarding the beneficiary's qualifications.

Section 101(a)(15)(H)(i)(b) of the Act, as was noted above, provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. Whether the duties the beneficiary would perform constitute services in a specialty occupation is at issue.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] 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 [2] 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In the instant case, the petitioner has asserted that the beneficiary would work as a corporate writer. The evidence submitted, however, demonstrates that she would not. The duties the beneficiary would actually perform have never been described, except by the beneficiary in her interview with

fraud officers. Her concessions at that interview were sufficient to show that she does not, and will not, work as a corporate writer, but insufficient to establish that the duties she actually performs qualify as specialty occupation duties.

The petitioner's failure to establish the substantive nature of the work the beneficiary would actually perform, in addition to precluding a finding that the proffered position qualifies as a specialty occupation position pursuant to section 214(i)(l) of the Act, also precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner's normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Yet further, the petitioner's vice president's description of the duties of the proffered position indicates that the beneficiary's job duties would be to write and edit various documents, including advertising copy, other promotional materials, business letters, proposals, reports, articles, public relations materials, and press releases. In the decision of denial, the director stated, "USCIS does not dispute that a bona fide position of Corporate Writer requires a beneficiary to have a baccalaureate degree." Although the director merely declined to dispute that requirement, the language used might occasion the misperception that the USCIS concedes that corporate writer positions categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty and, as such, qualify as specialty occupation positions. The AAO wishes to correct any such misunderstanding.

Assuming, *arguendo*, that the duties the vice president described are the actual duties of the proffered position, the petitioner would still be obliged to demonstrate that the proffered position is a position in a specialty occupation.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. In the section pertinent to Authors, Writers, and Editors, the *Handbook* states:

> *Writers and authors* develop original written materials for books, magazines, trade journals, online publications, company newsletters, and advertisements. Their works are classified broadly as either fiction or nonfiction and writers often are identified by the type of writing they do—for example, *novelists*, *playwrights*, *biographers*, and *textbook writers*. Writers such as *songwriters*, *screenwriters*, or *scriptwriters*, produce content for radio and television broadcasts, motion pictures, and other types of performance. An increasing number of writers are producing scripted material directly for the Web and other communication devices.

The *Handbook* further states:

> *Editors* review, rewrite, and edit the work of writers. They also may 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, journals, magazines, and other general-interest publications. Editors also review story ideas proposed by staff and freelance writers then decide what material will appeal to readers. They 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 publications. In the book-publishing industry, an editor's primary responsibility is to review proposals for books and decide whether to buy the publication rights from the author.

The duties described by the petitioner's vice president indicate that the position ostensibly offered is a writer/editor position. As to the education required for such positions, the *Handbook* states:

> A bachelor's degree or higher is typically needed for a job as an author, writer, or editor. Because writing skills are essential in this occupation, many employers like to hire people with degrees in communications, journalism, or English, but those with other backgrounds and who can demonstrate good writing skills may also find jobs as writers. Writers who want to focus on writing about a particular topic may need formal training or experience related to that topic. For example, textbook writers and fashion editors may need expertise in their subject areas that they acquired either through formal academic training or work experience. The Internet and other media allow some people to gain writing experience through blog posts, text messages, or self-publishing software. Some of this writing may lead to paid assignments based upon the quality of the writing, unique perspective, or the size of the potential audience, without regard to the absence of a degree.

That section of the *Handbook* does not suggest that writer/editor positions categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty. Rather, it suggests that such positions *typically* require a minimum of a bachelor's degree, and that many employers *prefer* a degree in communications, journalism, or English. Not only is that wide array of subjects too broad to qualify as a specific specialty, but the *Handbook* adds that those with other backgrounds may also qualify for writer/editor positions, if they can demonstrate that they write well.

The petitioner's vice president asserted, in the November 10, 2008 letter described above:

> [The petitioner's] special need for a Corporate Writer with a minimum of a Bachelor's degree level of university education in foreign languages or a closely related field is driven by the complexity, importance, and professional nature of the duties of the position offered.

The evidence provided does not suggest that the duties of the proffered position, as described by the petitioner's vice president, are any more complex or important than other writer editor positions, or that they are professional in some sense that other writing positions are not. Further, that a writing position is important, complex, and professional in nature would not suggest that it requires a degree in foreign languages. Common sense dictates that foreign languages would be of little value in a writer/editor position unless the position required writing in a foreign language.

The ostensible duties of the proffered position, as described by the petitioner's vice president, do, in fact, include writing in English and Korean. That appears, in fact, to be the only sense in which those duties are more complex than typical writing positions. Writing in two languages requires one to be bilingual. The petitioner provided no evidence, however, to support the assertion that it requires a degree in foreign languages.

Even pursuant to the job title and duties proposed by the petitioner's vice president, the petitioner has not demonstrated that the proffered position qualifies as a position in a specialty occupation. The petitioner has failed to demonstrate that the proffered position qualifies as a specialty occupation position, either pursuant to the duties proposed by the petitioner's vice president or pursuant to the actual duties the beneficiary would perform. The appeal will be dismissed and the visa petition will be denied on this additional basis.

The final issue to be addressed is whether, if the proffered position had been demonstrated to be a position in a specialty occupation, the beneficiary would be qualified for that position.

The record contains a diploma showing that Sogang University in Korea awarded the beneficiary a bachelor's degree in Korean Language and Literature with a minor in English Language and Literature.

A bachelor's degree does not, *per se*, qualify a beneficiary for employment in a specialty occupation. Rather, the position must require a degree in a specific specialty. *See Matter of Michael Hertz, Assoc.*, 19I&N Dec. 558,560 (Comm. 1988). Further, the beneficiary must have a degree in that specific specialty. *See Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

(B) completion of the degree described in paragraph (1)(B) for the occupation, or

(C) (i) experience in the specialty equivalent to the completion of such degree, and

(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

(1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

(4) Have [a] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish either that the beneficiary has completed a degree in the specialty that the occupation requires, or that, if he or she does not possess the required degree, that the alien has [1] experience in the specialty equivalent to the completion of such degree, and [2] recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

(1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

The record in the instant case contains an evaluation, dated November 28, 2003, from a professor of communications at the University of Tennessee, who provided that evaluation through an evaluation service. It states that the beneficiary's degree in Korean with a minor in English, combined with her employment experience, is equivalent to a U.S. bachelor's degree in public relations. The difficulty in supporting the instant visa petition with that evaluation is manifold.

First, nothing in the record indicates that a degree in public relations is a sufficient educational qualification for the proffered position.

Second, that evaluation relies not only on a foreign degree, but on the beneficiary's education *combined with her employment experience* in finding that she had the equivalent of a U.S. bachelor's degree. In order to rely on the beneficiary's employment experience, in whole or in part, in finding the equivalent of a minimum of a bachelor's degree or the equivalent in a specific specialty, the evaluator is obliged to demonstrate that he or she has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The record contains no assertion, let alone evidence, that the professor has such authority, or that the University of Tennessee has such a program.

Third, although that evaluation concludes, "For detailed statement of qualifications and experience of evaluator, see attached resume," no such résumé was provided.

Finally, in order to demonstrate that the beneficiary's Korean degree is equivalent to a U.S. Bachelor's degree in foreign languages, which the petitioner's vice president stated is a prerequisite of the proffered position, the petitioner would be obliged to provide an evaluation of the beneficiary's education from a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. The record contains no evaluation that states that the beneficiary's Korean degree is equivalent to a U.S. bachelor's degree in foreign languages.

Pursuant to the instant visa category, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a

specialty occupation. Because the finding that the petitioner failed to demonstrate that the proffered position qualifies as a specialty occupation position is dispositive, the AAO need not further discuss the issue of the beneficiary's qualifications. However, if the proffered position had been demonstrated to be a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty, the petitioner would have been obliged to demonstrate that the beneficiary has a minimum of a bachelor's degree or the equivalent *in that specific specialty*.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

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