PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: LIN-02-053-53185 Office: Nebraska Service Center Date: JAN - 8 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further consideration.

The petitioner develops software and provides professional services. It has 13,000 employees and a gross annual income of $192,069. It seeks to employ the beneficiary as a technical writer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. On appeal, counsel states, in part, that a review of the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) finds that a technical writer is a specialty occupation. Counsel also submits an article from the 1999 Career Guide in the U.S. News and World Report and cites Matter of Desai, 17 I&N Dec. 569 (BIA 1980). Counsel additionally submits two expert opinions as well as additional information.

The term "specialty occupation" is 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.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

> Work directly with systems analysts and programmers to write and edit program and system documentation, user manuals, training courses and procedures. Required to work independently on online system documentation and online help. Developing, writing and editing technical documentation and online help. Developing, writing and editing technical documentation for company's reports, manuals and related technical and administrative publications, preparing drafts of technical documents, incorporating reviewer or editor's comments into writing and distribution of the technical documents to experts for revision. Technical skills required for this position includes: Windows NT, HTML and FoxPro programming, MS-Access, Ms-Word, Power Point, Excel and MS-Publisher.

A review of the DOL's Handbook, 2002-2003 edition, at page 147, finds that a college degree generally is required for a position as a writer or an editor. Although some employers look for a broad liberal arts background, most employers prefer to hire people with degrees in communications, journalism, and English. For those who specialize in a particular field, such as fashion, business, or legal issues, additional background in the chosen field is expected. Here, the petitioner is requiring a bachelor's degree in English and knowledge of Windows NT, HTML and FoxPro programming, MS-Access, MS-Word, Power Point, Excel and MS-Publisher. The petitioner's requirement for a degree and experience in this specific specialty is reasonable, given the petitioner's business field. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

The director has not determined whether the beneficiary is qualified to perform the duties of the specialty occupation. It is noted that although the evaluator states that the beneficiary's one year of experience in computer information systems qualifies him for the proffered position, the record does not contain evidence that the beneficiary has the following skills that are listed in the job description for the proffered position: Windows NT, HTML and FoxPro programming, MS-Access, MS-Word, Power Point, Excel and MS-Publisher. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. He may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.