

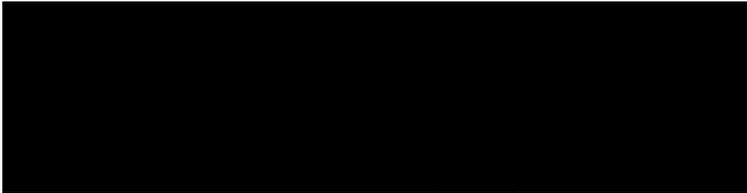
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U.S. Citizenship
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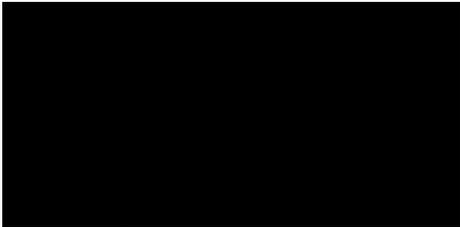
FILE: LIN 04 205 52005 Office: NEBRASKA SERVICE CENTER Date: JUN 08 2006

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, 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 sustained. The petition will be approved.

The petitioner is a television station on a college campus that seeks to employ the beneficiary as a producer and editor. The petitioner, therefore, 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 additional evidence.

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) the 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) the Form I-290B, the brief, and job posting. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a producer and editor. 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's duties are as follows:

- Report and confer regularly with the station manager on the progress of projects and assignments;
- Help produce shows for the petitioner and its international network by composing or editing scripts to meet management's requirements;
- Coordinate production such as audio, graphics, timing, and camera work;
- Function as a production team member for current shows;
- Participate as part of on-location production crew, and contribute to post-production by viewing taped programs and selecting scenes for the final version using video equipment;
- Evaluate and select scenes in terms of dramatic and entertainment value and story continuity;
- Edit video tape segments to specified lengths and reassemble segments in a sequence that presents the story with maximum effect;
- Review edited video tape on the screen or monitor and make corrections;
- Create promotional spots for shows and the station;
- Compose scripts to meet management's requirements, coordinate aspects of production, and edit content using video editing equipment;
- Work directly with underwriting clients in developing and implementing spots for on-air sponsorship;
- Coordinate aspects of production of the spots and edit them for content using video editing equipment;
- Review product with underwriting clients and make necessary adjustments;
- Assist production manager with equipment maintenance bringing needs for repair and adjustment to the immediate attention of the station manager and chief engineer;
- Operate occasionally station on-air master control;
- Train volunteers in production such as camera operation, technical directing, graphics, audio production, floor directing, editing, and master control; and
- Work with college students on production.

The petitioner asserts it requires a bachelor's degree in communications or a related field for the proposed position.

In denying the petition, the director found the information from the *Occupational Information Network (O*Net)* and the *Dictionary of Occupational Titles (DOT)* unpersuasive in establishing the proposed position as a specialty occupation. According to the director, the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) provides a comprehensive description of the nature of occupations and their educational, training, and experience requirements. The director stated that editors and camera operators are depicted in the *Handbook* as requiring skills through on-the-job training or formal postsecondary training at

vocational schools, colleges, universities, or photographic institutes; and that formal education is required only for some jobs. The director stated that the *Handbook* conveys that a wide variety of options exist for entry into an editor job. In acknowledging the employee chart, the director stated that not all of the production employees have baccalaureate degrees in a specialized area. The director found the submitted job postings insufficient to establish that either the proposed position or the petitioner's industry require a baccalaureate degree in a specific specialty. According to the director, the petitioner established none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a letter from the petitioner, which states that the petitioner requires a bachelor's degree for the offered position, which is newly created. The petitioner also asserts that it has always hired graduates with a bachelor's degree with only two exceptions: persons hired as short-term interns who worked while attaining a bachelor's degree in communications. Counsel submits letters from members of the petitioner's board of directors which discuss the close affiliation between the petitioner and Walla Walla College Communications Department.

Upon review of the record, the petitioner has established one 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.

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.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The proposed position, in the context of the petitioner's business operations and the submitted evidence, would require a baccalaureate degree in a specific academic specialty such as communications. Accordingly, the petitioner establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the evidence in the record, the beneficiary is qualified for the proposed position. The record reflects that the beneficiary holds a baccalaureate degree in mass communication from a college in the United States. As such, the beneficiary possesses a baccalaureate degree that pertains to the offered position.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation, and that the beneficiary is qualified to perform the services of the specialty occupation.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.