

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

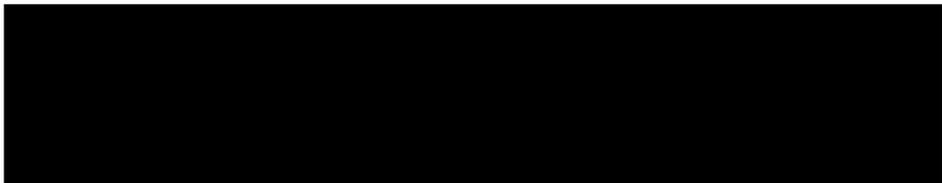
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

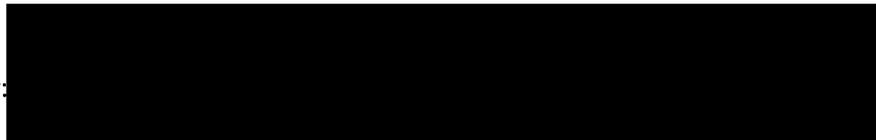
81

PUBLIC COPY



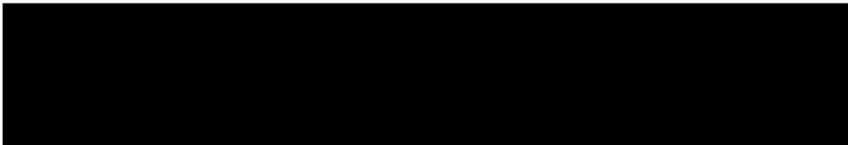
FILE: EAC 06 167 52373 Office: VERMONT SERVICE CENTER Date: JAN 25 2008

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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.

The petitioner's business is dedicated to the design and development of museums and educational films around the world. It seeks to employ the beneficiary as a logistician and 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 stating that the position did not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information asserting that the proffered position is a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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 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:

[A]n 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 are 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 with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a logistician. Evidence of the beneficiary's duties was set forth in the Form I-129 petition and supporting documentation, and in response to the director's request for evidence. The petitioner indicated that the position focuses on the development and management of business networks and supply chains. Responsibilities of the position include making travel arrangements, managing suppliers, and relationship building between permit agencies, foreign government officials and private owners of filming locations. Specifically, the beneficiary would:

- Develop and implement technical project management tools such as plans, schedules, and compliance matrices;
- Develop proposals that include documentation for estimates, and implement approved proposals;
- Direct and support the compilation and analysis of technical source data necessary for fulfilling contractual requirements;
- Direct availability and allocation of materials, supplies and finished products;
- Direct team activities, establishing task priorities, scheduling and tracking work assignments, providing guidance and ensuring the availability of resources;
- Manage the logistical aspects of production life cycles, including coordination or provisioning of demos, and the minimization of obsolescence;
- Participate in the assessment and review of production design alternatives and production design change proposal impacts;
- Perform production life-cycle cost analysis, and develop component studies;

- Plan, organize and execute logistics support activities such as maintenance planning, equipment testing and evaluation repair analysis, and test equipment recommendations; and
- Provide project management services, including the provision and analysis of technical data.

The petitioner finds the beneficiary qualified to perform the duties of the proffered position by virtue of her past education and work experience which has been determined by a credentials evaluation service to be equivalent to a bachelor of science degree in hospitality management.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied and include duties normally performed by logisticians. The *Handbook* does not provide a detailed analysis of this particular position. It does, however, provide data about the position noting that the most significant source of postsecondary education or training for the position is a bachelor's degree. The *Handbook* does not state, however, that the degree need be in any particular educational discipline. The *Handbook's* statements concerning the educational requirements for the position are consistent with those set forth in the Department of Labor's *Occupational Information Network (O*NET)*. The *O*NET* states that most logistician positions require a four-year bachelor's degree, but some do not. Again, the degree requirement is not limited to a specific educational discipline. The petitioner has not established that the proffered position qualifies as a specialty occupation under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner did not assert that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, and offered no evidence in that regard. The petitioner has failed, therefore, to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner asserts that it normally requires a degree for the position. To determine whether a proffered position may be established as a specialty occupation under the third criterion – the employer normally requires a degree or its equivalent for the position – the AAO usually 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. In the instant case, the petitioner has submitted no evidence regarding its hiring practices, except to say that it previously employed a non-degreed individual for the position with disastrous results. The petitioner has not established that it normally requires a degree for the position. Additionally, CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000). 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. To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. The petitioner has not established the offered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nothing in the record establishes that the duties to be performed by the beneficiary are any more unique, or specialized and complex, than the duties that are routinely performed by logisticians who are not required to hold a degree in a specific educational discipline. The petitioner did not provide for the record examples of projects demonstrating the range and complexity of the logistical duties that the beneficiary would perform. The petitioner's description of the duties to be performed in this instance does not indicate that a degree in a specific educational discipline is required to perform those duties. While the position may require an individual with organizational skills, problem solving abilities and an attention to detail, those abilities may be developed in a wide range of unrelated degree programs, or from job experience alone. The petitioner has failed to establish that the proffered position qualifies as a specialty occupation under either of the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation. The petitioner submitted an evaluation of the beneficiary's foreign education and work experience. That evaluation was submitted by a credentials evaluation service and concluded that the beneficiary's past education and work experience is equivalent to a bachelor's degree in hospitality management. A credentials evaluation service, however, is only authorized to evaluate an individual's foreign education for degree equivalence purposes, not past work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). A beneficiary's past work experience may be only be evaluated for degree equivalence purposes, by 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. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The record does not establish that the evaluator in this instance has authority to grant college-level credit for training and/or experience, or that he is employed by an institution of higher learning that has a program for granting such credit. For this additional reason, the petition may not be approved.

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 failed to sustain that burden.

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