



U.S. Department of Justice

Immigration and Naturalization Service

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

[Redacted] **Public Copy**

File: EAC 00 080 50288 Office: Vermont Service Center Date: JUL 17 2001

IN RE: Petitioner: [Redacted]
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]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

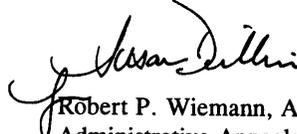
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a new film making and production business, established by the beneficiary in 1999. The petition shows that the company employs two persons. However, the firm had no activity and had produced no income at the time of filing. The company projects a gross annual income of \$40,000. It seeks to employ the beneficiary as a film producer for a period of three years. The director determined that the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

The record shows that while in nonimmigrant student status, the beneficiary developed a client base during optional practical training and formed her own corporation to develop her business. The beneficiary is operating the business from a private residence and has petitioned for herself in her role as president of the company.

On appeal, counsel argues that the Director's decision is arbitrary and capricious in that it takes a hypertechnical and ultravires approach to a credentials evaluation by a university faculty member who has evaluated credentials and is experienced and who is familiar with the professional accomplishments of the beneficiary of this H-1B petition. Counsel submits a second evaluation by this same individual and an additional evaluation from another academic.

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.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

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 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 have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary studied at The Colombian Institute for the Development of Higher Education at its School of Cinematography and Photography from 1989 to 1991 in Bogota, Columbia. The record contains an evaluation report of her educational credentials. In the judgment of the evaluator, the beneficiary has the equivalent of two years of college, specializing in Film and Photography, at an accredited institution in the United States. Additionally, the record shows that the beneficiary satisfactorily completed a non-credit certificate program in film production in 1998 at the Adult Division of The New School for Social Research in New York City.

In this case, the beneficiary has the equivalent of two years of university-level credit. It is determined that the beneficiary is not qualified to work in a specialty occupation on the basis of education alone.

The record indicates that the beneficiary has worked on various documentary film projects as a production assistant, assistant cameraperson, camera operator, and script supervisor. Additionally, she produced an experimental documentary film while a student at The New School for Social Research. Nonetheless, it is determined that the petitioner has provided insufficient information regarding the beneficiary's employment experience for a finding that she is qualified to work in a specialty occupation on the basis of her educational background and level of work experience. The record

contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes her to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary qualifies to perform services in a specialty occupation and the petition may not be approved.

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.

The duties of the offered position are described as follows:

Ms. [REDACTED] is our principal Producer. As such, she determines the projects upon which we work and organizes all the necessary elements for the successful completion of the production. In film and video production, these elements include oversight of editing and direction, hiring of actors, technicians, sight location, obtaining necessary permits, hiring of researchers and arranging

for distribution, among other things. She will also do film direction as well as print and film editing.

The description provides little impression of the beneficiary's actual day-to-day duties. For example, the petitioner has provided no indication as to the amount of the beneficiary's time to be spent on the various activities above. The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. In addition, the petitioner has not shown that similar firms require the services of such individuals in parallel positions.

The record indicates that companies located in New York, Florida, Spain and Columbia intend to enter into contracts with the petitioning firm to produce commercial films and publicize construction projects abroad. Pursuant to 8 C.F.R. 214.2(h)(2)(1)(B) a petition which requires services to be performed at or training to be received in more than one location must include an itinerary with the dates of services and training.

The record shows that the beneficiary will be working at client sites other than the petitioner's corporate headquarters. It is determined that the petitioner has failed to submit an itinerary listing the dates and locations where these services will be performed.

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 not sustained that burden.

ORDER: The appeal is dismissed.