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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



File: WAC-99-253-50512 Office: California Service Center Date: 20 NOV 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:



Public Copy

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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an ethnic national newspaper and television company with 25 employees and a gross annual income of \$1,000,000. It seeks to employ the beneficiary as an assistant producer 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 and additional documentation in support of the appeal.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director denied the petition because the petitioner failed to establish that the proffered position meets any of the required criteria for classification as a specialty occupation. On appeal, counsel argues that a baccalaureate degree or its equivalent is normally the minimum requirement for entry into the proffered position. Counsel further contends that the job duties are so complex and unique due to the issues regarding the Indian/American community in terms of politics, finance, and economics, that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Counsel's argument is not persuasive. The Service does not rely solely on the title of a position in determining whether that position qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. The petitioner described the duties of the offered position as follows:

[The assistant producer is] responsible for coordinating writing and director for PIO Post, a 30-minute variety entertainment program for the Indian community across the

United States. Responsible for assisting in determining programming segments of human interest.

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.

A review of the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 254-256 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a producer. There are no specific training requirements for producers and directors, so they come from any different backgrounds. Talent, business acumen, and experience are very important determinants of success for producers and directors.

Counsel argues on appeal that the Handbook over-generalizes the work of producers and fails to reflect the duties or the minimum requirements for employment as a producer of public television and community television programs, the type of programming which most closely resembles the programming produced by Indamec. Counsel submits copies of fourteen vacancy announcements for producers and similar positions in public television, national public radio, and local community programs. After careful review of the position descriptions provided, it is concluded that only one of the positions requires a baccalaureate degree in a specific specialty, in this case broadcasting or mass communications. Thus, counsel has not shown that the degree requirement is common to the industry in parallel positions among similar organizations

Counsel contends the petitioner normally requires a baccalaureate degree for positions as producers and submits a letter from Romesh K. Japra, Executive Producer of Indamec, in support of this claim. Mr. Japra states that a bachelor's degree is a pre-requisite for

the proffered position and asserts that Indamec currently employs two individuals in H-1B status who have baccalaureate degrees and whose positions are akin to the proffered position. He provided a photocopy of an H-1B approval notice for one of these individuals. However, the record of proceeding, as presently constituted, does not contain copies of the previously approved petitions and their supporting documentation. It is, therefore, not possible to determine definitively whether they were approved in error or whether those positions and duties are similar to the position in question. Counsel has not submitted sufficient evidence to establish that the employer normally requires a baccalaureate degree in a specific specialty as a requisite for the position in question.

Finally, neither counsel nor the petitioner has submitted any evidence to establish the claim that the beneficiary's proposed duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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.