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U.S. Department of Justice

Immigration and Naturalization Service

identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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



File: EAC-01-061-53187 Office: Vermont Service Center

Date: 1 APR 2002

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
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 appeal will be dismissed.

The petitioner is a company providing communications and production services with 2 employees and a projected gross annual income of \$200,000. It seeks to employ the beneficiary as a senior 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.

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 a review of the Department of Labor's Occupational Outlook Handbook (Handbook), finds that baccalaureate level training is not a necessary requirement for employment as a writer. On appeal, counsel argues that the proffered position is that of senior producer, rather than that of senior writer as listed on the both the initial I-129 petition and labor condition application. Counsel asserts that the position of senior producer is a specialty occupation, and that the Service ignored the evidence of record in not reaching the same determination.

Counsel's statements on appeal are not persuasive. In both the I-129 petition and the corresponding certified labor condition application, the petitioner listed the offered position as senior writer.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

A review of the Handbook, 2000-2001 edition, at page 245 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a writer or editor. While some employers prefer a baccalaureate degree in communications, journalism, or English, others prefer a broad liberal arts background. In addition, some transfer from jobs as technicians, scientists, or engineers while others begin as research assistants, or trainees in a technical information department, develop technical communication skills, and then assume writing duties. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the proffered position as listed on the I-129 petition.

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. The petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is 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 arguments put forth by counsel on appeal are acknowledged. Upon initial submission, both the I-129 petition and corresponding labor condition application specified that the petitioner would employ the beneficiary as a senior writer. The record contains evidence that the beneficiary will be employed in a differing role as a senior producer. This represents a substantial change in the proffered position as listed on the I-129 petition at the time of the initial filing. In such a case, the regulations require the petitioner to file an amended or new petition, with fee, to the office where the original petition was filed to reflect these

changes. In the case of an H-1B petition, this requirement includes obtaining a new labor condition application from the Department of Labor. 8 C.F.R. 214.2(h)(2)(i)(E). While the record contains a new labor application listing the job offered as senior producer, the petitioner has failed to file an amended or new petition containing an accurate listing of the proffered position.

Beyond the decision of the director, the record contains insufficient evidence to demonstrate that the position of senior producer is a specialty occupation requiring a minimum of a bachelors degree. It must be noted that a further review of the Handbook 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. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.