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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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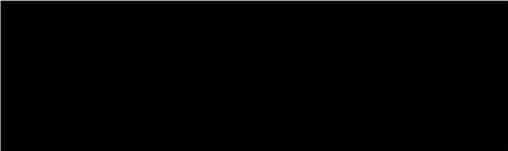
File: LIN-01-217-55034 Office: Nebraska Service Center

Date: JUL 02 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, 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 directory manufacturer with approximately 150 employees and an approximate gross annual income of \$10 million. It seeks to employ the beneficiary as a layout artist 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 the proffered position appeared to be that of a prepress worker, a position that is not a specialty occupation. The director found that the duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. On appeal, counsel states, in part, that a layout artist, which is analogous to a graphic designer, is a specialty occupation. Counsel further states that the petitioner normally requires all of its professional employees in its Graphic Arts/Layout Department to hold relevant post-secondary degrees.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job 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. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- * Design and layout Yellow Pages using QuarkXpress software,
- * Collect contents of Yellow Pages for output,
- * Burn CD for printer, and

- * Manage fonts by ensuring they are consistent.

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.

First, the Service does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in commercial graphics or a related field. In these proceedings, the duties of the position are dispositive and not the job title. Although counsel argues that the proffered position is that of a graphic artist, an occupation which usually requires a baccalaureate degree in commercial graphics or a related area, the record does not contain a comprehensive description of the beneficiary's duties that demonstrates that the beneficiary would be primarily performing in the capacity of a graphic artist rather than a desktop publisher, an occupation that, according to the Department of Labor (DOL) in its Occupational Outlook Handbook (Handbook), 2002-2003 edition, does not require a baccalaureate or higher degree in a specialized area. The record as it is presently constituted does not demonstrate that the beneficiary's proposed duties are so complex that a baccalaureate degree in commercial graphics is required.

Second, although counsel argues that the petitioner requires all of its professional employees in its graphic arts/layout department to hold relevant post-secondary degrees, the record contains a copy of a baccalaureate degree for one such employee whose field of study was "family and consumer sciences." The record also contains a copy of a bachelor of arts degree for another employee, with no particular field of study designated. As such, the petitioner has

not persuasively demonstrated that it normally requires a baccalaureate or higher degree in a specialized area for the proffered position. Third, 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 petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.