



D2

U.S. Department of Justice
Immigration and Naturalization Service

~~Identifying 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-00-211-50399

Office: Vermont Service Center

Date:

08 JUL 2002

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)

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 television and video production business with eleven employees and a gross annual income of \$100,000. It seeks to employ the beneficiary as a video editor for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a statement and additional documentation.

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 determined that the record did not demonstrate that the position qualifies as a specialty occupation or that the beneficiary was qualified to perform services in a specialty occupation. On appeal, counsel argues that the proffered position is a particularly specialized one which requires a high level of creative and technical expertise combined with practical knowledge of television production techniques. Counsel contends that the beneficiary is qualified to perform services in a specialty occupation because she possesses a foreign degree equivalent to a bachelor's degree in film/communications/fine arts.

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 as follows:

1. Edits television and cable television video and sound presentations using non-linear digital equipment.
2. Evaluates and selects most appropriate scenes from all raw footage and B-roll in terms of dramatic and entertainment value as well as story continuity.
3. Trims film segments to specified lengths and reassembles video material in order to achieve the maximum and desirable effect and maintain the high standards of the company's shows.
4. Edits video material for TV commercials to be released for the sponsors of the show.
5. Serves as camera person and lighting assistant during production shoots and coverage of activities.

The proffered position appears to be that of a broadcast editor. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, finds that a college degree is generally required for a position as an editor. It is noted that not all editor positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the duties are of such complexity as to require a baccalaureate degree in a specialized and related area. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations and overcome this particular basis of the director's denial.

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 record shows that the beneficiary graduated from De La Salle University in Manila, Philippines, holding a Bachelor of Arts degree. The record also contains a copy of the beneficiary's Official Transcript of Records. This document lists the beneficiary's coursework at this institution and describes her degree as follows:

Bachelor of Arts/B.S. in Commerce
Org'l Communication/Mgt. Financial Inst.

A credentials evaluation service found that the beneficiary's degree and diploma are equivalent to a "Bachelor of Arts, with a double major: Business Administration and Organizational Communications, from an accredited institution of higher learning in the United States."

This Service uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. See Matter of Sea, Inc., 19 I&N Dec. 817 (Comm. 1988).

Here, the evaluation of the beneficiary's foreign credentials is based solely upon her education. The evaluator found the beneficiary's foreign education equivalent to a bachelor of arts degree with a double major in both business administration and organizational communication conferred by a U.S. institution.

However, a review of the beneficiary's transcripts from De La Salle University reveals that she took thirty-three courses specifically related to business administration or other business topics. Although the beneficiary took nine courses in subjects such as organizational change and development, communication theory, and corporate communication, such course work would not typically be sufficient to result in the awarding of major in organizational communication. The evaluator failed to provide a reasonable explanation as to how an individual would receive a major in a business administration after taking thirty-three corresponding courses, and at the same time also receive a major in the different concentration of organizational communication after taking only nine courses directly related to this particular subject. Accordingly, the evaluation is accorded little weight.

Counsel contends that the beneficiary is qualified to perform services in a specialty occupation because she possesses a foreign degree equivalent to a bachelor's degree in film/communications/fine arts. However, counsel has not submitted any evidence which would tend to support his contention. It was held in Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988) and Matter of Ramirez-Sanchez, 17 I&N Dec. (BIA 1980), that the assertions of counsel do not constitute evidence.

The Service is not persuaded by any inference that the beneficiary is qualified to fill the proffered position based upon a combination of her education and her purported work experience in editing positions. While the record contains a listing of the beneficiary's work history which tends to indicate that she has approximately three years of relevant employment experience, the record does not contain any evidence such as affidavits or letters of employment, to corroborate the claimed employment and experience acquired by the beneficiary. In addition, the record does not contain any evaluation of the beneficiary's purported work experience from 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 based on an individual's training and/or work experience. Even if the beneficiary had worked as claimed, the petitioner has not shown that the beneficiary's work experience is the equivalent of a baccalaureate or higher degree or that such work experience was experience in a specialty occupation. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services as an editor.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized field of study. 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

demonstrated that the beneficiary qualifies to perform services in a specialty occupation.

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 previous decisions of the director and the Associate Commissioner will not be disturbed.

ORDER: The appeal is dismissed.