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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536



MAY 14 2002

File: EAC-01-132-51932 Office: Vermont Service Center

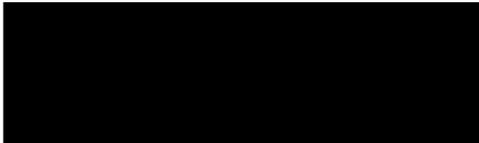
Date:

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, Vermont Service Center, and is now before the Associate Commissioner, Examinations, on appeal. The appeal will be sustained.

The petitioner is an art gallery with 5 employees and an approximate gross annual income of \$800,000. It seeks to employ the beneficiary as a "Director, Museum" for a period of three years. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel submits a brief and additional evidence.

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 petitioner had not established that a baccalaureate or higher degree in a specialized area is a minimum requirement for entry into the field. The director also determined that the petitioner had not shown that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge.

On appeal, counsel argues that the proffered position qualifies as a specialty occupation because the petitioner requires a Bachelor of Fine Arts degree or its equivalent for the proffered position and also because the degree requirement is common to the industry in parallel positions among similar organizations.

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:

[The beneficiary] will be responsible for directing the acquisition of artwork directly from both European and American artists, principally contemporary photography and sculpture. She would then organize exhibitions from conception to set-up.

In response to a Service request for additional evidence, the petitioner provided the following expanded description of the duties of the position:

1. Contact artists and review their work;
2. Select the artwork for the exhibit (requiring knowledge of art techniques);
3. With photographs, work with professional labs regarding printing, mounting and framing;
4. Advertise in professional art journals, send out opening night invitations and write a press release;
5. Provide journalists and critics with accurate information regarding the artists and their work (explaining the work of the artist in the context of art history and international contemporary art production.)
6. Contact collectors both in America and Europe, and make appointments with them and receive them at the gallery (explaining the work of the artist again, if necessary).

The petitioner further states, "[a]t times, the director will also take care of requests from curators, museums and foundations, including providing them with information concerning the artists exhibited at the gallery."

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.

Counsel asserts, on appeal, that the degree requirement is common to the industry in parallel positions among similar organizations. In support of his assertion, counsel submits six letters. [REDACTED]

[REDACTED] Curator of Contemporary Art at the [REDACTED] states that it is the customary hiring policy in the art industry to require a bachelor's degree in fine arts for positions as art gallery directors. [REDACTED] Department of the Chief Curator at Large at the Museum of Modern Art in New York, New York, states that it is the industry standard to require a bachelor's degree in fine arts or its equivalent for a position as an art gallery director. [REDACTED] Curator of The Menil Collection in Houston, Texas, states that it is normal to require an art gallery director to have at least a bachelor of fine arts degree for positions as art gallery directors. In addition, [REDACTED] and [REDACTED] two of them art gallery owners and one an art gallery director, state that the position of director of an art gallery requires a bachelor's degree in fine arts or its equivalent. In view of the foregoing, it is concluded that the petitioner has shown that the degree requirement is common to the industry in parallel positions among similar organizations.

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 sustained that burden.

ORDER: The appeal is sustained.