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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.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC-97-200-50738 Office: California Service Center

Date: OCT 18 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:  
[Redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, California Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. A subsequent motion to reopen and reconsider was granted by the Associate Commissioner for Examinations and the previous decision of the Associate Commissioner was affirmed. The matter is now before the Associate Commissioner for Examinations on a second motion to reopen and reconsider. The previous decisions of the director and Associate Commissioner will be withdrawn and the appeal will be sustained.

The petitioner is a film and production business with three full-time employees and up to 100 employees during periods of production, and a guaranteed base annual income of \$1.3 million. It seeks to employ the beneficiary as a research specialist for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a market research analyst position.

On appeal, counsel had provided additional information in support of the appeal.

The Associate Commissioner dismissed the appeal reasoning that although the beneficiary qualifies for the proffered position, the position does not qualify as a specialty occupation.

On motion, counsel argued that even though the Associate Commissioner reversed the director's grounds for denial, the Associate Commissioner raised an issue not discussed by the director, and dismissed the appeal, reasoning the petitioner had not established that the proffered position is a specialty occupation.

The Associate Commissioner affirmed the director's and his previous decisions, finding that the beneficiary did not qualify for a market research analyst position and the position did not qualify as a specialty occupation.

On second motion, counsel states, in part, that the Associate Commissioner's finding that the beneficiary does not qualify for the proffered position contradicts the Associate Commissioner's previous finding that the beneficiary does qualify for the proffered position. Counsel further states that proffered position requires the research services of a professional with extensive educational qualifications in the field of film studies.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty

occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

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 beneficiary holds a bachelor of arts degree in motion picture-television conferred by a U.S. institution. She also holds a master's degree in cinema conferred by a French institution. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) 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.

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 proffered position are described in pertinent part as follows:

[The beneficiary's] prospective responsibilities will not involve the type of professional functions for which a background in the general field of marketing would provide adequate preparation, and it is for this reason that her position has not been described as being that of a generic marketing research analyst. Rather, her responsibilities will involve professional functions requiring the type of expertise for which university-level training such as is evidenced by her educational degrees would be required.

This expertise embraces a number of areas which are quite specific to the motion picture industry, and not at all

obtainable by virtue of a generic degree in the field of marketing. Key among these areas is the rapidly developing field of digital effects and post-production. [The beneficiary's] Master's thesis at the Sorbonne specifically involved an analysis of digital and post-photographic techniques, and their impact on the cinema, particularly the French cinema . . .

What this requires, however, is the services of an individual who understands the field of digital effects and post-production, and who combines that understanding with an academic expertise in both U.S. and European production, together with a very specific understanding of the current state and requirements of the French and European special effects industry, including the cost structures and capabilities of that industry. This individual will analyze proposed projects with a view to determining projected costs and scheduling requirements of development, principal photography and post-production, and then to making a comparison of projected costs depending on whether these stages are conducted in North American or European venues, and on whether the European industry has the capability to handle any required digital effects and post-production work . . . These analyses will then be presented to Mr. Besson, and associated U.S. and European production entities, with a view to determining the viability of proposed projects with respect to various proposed budget levels and scheduling requirements, and in light of current creative and commercial trends.

. . . the prerequisite for these responsibilities are an expertise in the production industry, and in the European industry and its digital post-production component in particular, including the detailed workings of European production and post-production, and the cost structures and scheduling aspects of each production and post-production.

The record contains a letter from an industry expert who states, in part, as follows:

As the force behind more than 500 major motion pictures worldwide, I can attest to the requirements necessary to achieve success in the film industry. This would include many means, including educational preparation in the field of film or cinema studies, and working within the industry itself, both of which [the beneficiary] has done.

The proffered position is that of a film research specialist rather than a market research analyst position as described in the Department of Labor's Occupational Outlook Handbook. It is noted that not all film research specialist 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.

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. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The decisions of the director and Associate Commissioner are withdrawn and the petition is approved.