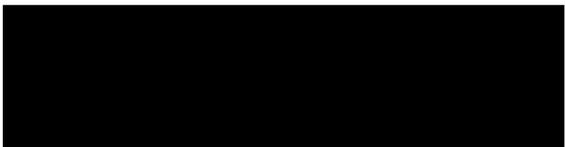


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS. 3/F
Washington, D.C. 20536



AUG 25 2003

File: EAC 02 177 51963 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)

ON BEHALF OF PETITIONER:

SELF REPRESENTED

Identifying data deleted to
prevent invasion of personal privacy

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a corporation that operates a non-profit museum, residency and conference program. It has two employees and gross annual income of \$67,000. The petitioner seeks to employ the beneficiary as a Development and Residency Program Director for a period of three years. The director determined that the proffered position failed to qualify as a specialty occupation.

On appeal, the petitioner submits additional information and contends that the proffered position is a specialty occupation. Specifically, the petitioner states that a bachelor's degree in art history, with experience and knowledge in the field of contemporary art, is a minimum requirement for entry into the position. The petitioner further states that the duties of the proffered position were previously filled by two part time individuals, both of whom held baccalaureate or higher degrees.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) 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.

The term "specialty occupation" is further 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 field 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 Bureau does not simply rely on a position's title 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 Bureau considers. In the initial I-129 petition, the petitioner indicated that the

beneficiary would: write grants; research fundraising possibilities (foundations/consulates/individuals); and organize and oversee the residency program, and the international bi-annual conference. The beneficiary's job responsibilities were further detailed in her offer of employment, dated April 20, 2002:

[T]he position involves specific duties as follows, and additional duties as assigned:

Development (approximately 2/3 [of] time): A significant amount of Development time will be devoted to researching, writing, and submitting grant applications and personal followup [sic] to foundations, consulates, and some individuals for funding of all programs (Exhibition, Residency, and Conference programs).

Residency (approximately 1/3 [of] time): Coordinate approximately eight residents a year from around the world for one month residencies in New York; arrange travel, maintain Resident apartment, maintain contact list, contact consulates for funding opportunities, coordinate resident talk and reception at exhibition space, and general hospitality.

Conference (within time of Residency Program): Organize all aspects of bringing together 12 people from as many countries in another country for a closed think-tank bi-annual conference; arrange travel, housing, and miscellaneous logistics. Director will attend the conference.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. Specifically, the petitioner was asked to provide a detailed statement of the beneficiary's proposed duties and day-to-day responsibilities, a statement of which duties require the expertise of one holding a baccalaureate degree and how the beneficiary's education relates to the position, evidence that a baccalaureate degree is a standard minimum requirement for entry into the position offered in the petitioner's operation and similar organizations, and a list of employees in the proffered position with the degree and field of study of those employees.

In response to the director's request, the petitioner indicated that the beneficiary would be the Director of Development and the Residency Program. The beneficiary would organize the selection of approximately eight residents each year from around the world who travel to New York for a one month residency. The beneficiary would then coordinate the resident's transportation and activities while making funding applications from the

countries in which the residents reside, as well as from foundations, individuals, corporations and other organizations. While in the country, residents would make presentations at the petitioner's exhibition space. The beneficiary would participate in these presentations and moderate group discussions relevant to the resident's area of expertise. The petitioner contends that the position requires substantial knowledge of art history and the contemporary art world that only a baccalaureate or higher degree could provide.

The petitioner further noted that the proffered position was advertised in professional publications. More than 78 applicant's responded to the advertisement, and all held a bachelor's, or higher, degree. In the advertisement itself, the petitioner indicated "Art history/curatorial grad, preferred." The director held that a bachelor's degree was not therefore, required, but simply preferred for the position and accordingly, the position was not a specialty occupation. The petitioner explained that a minimum of a bachelor's degree was indeed required, and that the "preferred" designation was made to indicate a preference for a degree in art history with "curatorial studies majors", as opposed to art history with "studio majors." The petitioner's explanation is reasonable in this regard.

In further response to the director's request for additional evidence, the petitioner provided three employment advertisements to support its contention that a bachelor's degree is the standard minimum requirement for the proffered position in the art field. One was for an Associate Director of Development, requiring a B.A., or its equivalent, with knowledge of art being an essential requirement. Another was for a Development Associate that made no reference to a degree requirement. The final advertisement was for the position of Gallery Manager and required a B.A. An industry standard cannot, however, be determined from these three advertisements as the duties associated with the proffered position are substantially different from those associated with the jobs advertised.

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 established that the proffered position is a specialty occupation. Approximately one-third of the beneficiary's duties involve the residency program. The beneficiary is responsible for the selection of artists from around the world to travel to the United States and participate in that program. Among other responsibilities, the beneficiary will coordinate the resident's presentation and participate in panel discussions as a moderator. The beneficiary must, therefore, have a learned understanding of current art activities at local, national and international levels, as well as a familiarity with key participants in those communities. With regard to the development/fundraising activities of the proffered position, it should be noted that many entities engage fundraisers without the requirement of a bachelor's degree. The fundraising associated with the petitioner's enterprise, however, is highly specialized. The beneficiary is tasked with soliciting sustaining donations for a non-profit organization in the field of contemporary art. Solicitation from potential donors necessarily requires knowledge of art history and the contemporary art world. The petitioner has established that the nature of the specific duties of the proffered position 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 beneficiary holds a B.A. degree in Fine Art History with a minor in English. She is, therefore, qualified to perform the duties of the proffered position.

The burden of proof in these proceedings rests solely with the petitioner, and the petitioner has sustained that burden. Section 291 of the Act, 8 U.S.C. § 1361. The appeal shall accordingly be sustained, and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.