

DR

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

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



AUG 28 2003

File: SRC 02 163 53871 Office: TEXAS SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:

SELF REPRESENTED

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is an advertising agency with 25 employees and a gross annual income of \$1,855,513. The petitioner seeks to employ the beneficiary as an art director for a period of three years. The director determined that the proffered position failed to qualify as a specialty occupation, and that the petitioner had not established that the beneficiary was qualified to perform the services of a specialty occupation.

On appeal, the petitioner asserts that the proffered position is a specialty occupation, and that the beneficiary is qualified to perform the duties associated with that position. In support of those assertions, the petitioner submits a statement from its creative director and the campus liaison of The Creative Circus, as well as a credential evaluation report from World Education Services indicating that the beneficiary holds a foreign degree equivalent to a bachelor's degree in marketing and advertising from a regionally accredited university in the United States.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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 I-129 petition, the petitioner indicated that the beneficiary would serve as an art director. In that capacity, he would "formulate design concepts and presentation approaches," as well as "direct workers engaged in art work, layout design, and copy writing for visual communications."

The director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner provide documentary evidence detailing the number of art directors employed by the petitioner and the degrees held by those individuals, evidence that the beneficiary holds a baccalaureate or higher degree, or its equivalent, evidence that the proffered position is a specialty occupation, and evidence that the petitioner is qualified to perform the duties associated with a specialty occupation. In response to that request, the petitioner provided an approved labor condition application (LCA), a copy of the beneficiary's foreign degree, a copy of the beneficiary's certificate of completion from the Creative Circus and a statement from the petitioner's creative director summarizing the terms of the beneficiary's employment.

In the *Occupational Outlook Handbook*, 2002-03, at 118, the Department of Labor describes, in part, the duties of an art director as follows:

Art directors develop design concepts and review the material that is to appear in periodicals, newspapers, and other printed or digital media. They decide how best to present the information visually, so it is eye-catching, appealing, and organized. They decide which photographs or artwork to use and oversee the layout design and production of the printed material. They may direct workers engaged in art work, layout design, and copy writing.

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 qualify the offered position as a specialty occupation. A baccalaureate degree, or its equivalent, is not the minimum requirement for entry into the position of an art director. Computers are used widely in visual arts/advertising, and knowledge and training in them are critical for many jobs in the field. *Id.* at 119. That training however, may be obtained from independent schools of art, as well as colleges or universities. The petitioner's creative director indicated in his response to the director's request for additional evidence, that a bachelor's degree would rarely, if ever, qualify an individual for an art director's position. The beneficiary was deemed qualified for the proffered position as a result of the specialized, industry specific training that he received at the Creative Circus. The Creative Circus is an advertising specialty school and an accredited member of the Council on Occupational Educational. It is not, however, a university offering bachelor's level training. The petitioner has not, therefore, established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. Third, the petitioner failed to present any evidence to establish that parallel positions among similar organizations in the industry commonly require a bachelor's degree or its equivalent, or that the subject position is so complex or unique that it could be performed only by an individual with a bachelor's degree. 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 those duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations. The beneficiary's qualifications to perform the duties associated with the proffered position will not be addressed, as it has been determined that the position is not a specialty occupation. That issue is, therefore, irrelevant.

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.