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

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

File: WAC 02 128 53203 Office: CALIFORNIA SERVICE CENTER Date: **DEC 11 2003**

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:

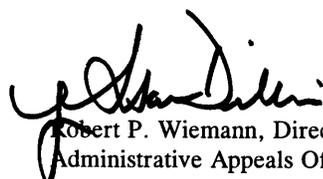
INSTRUCTIONS:

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 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 Citizenship and Immigration Services (CIS) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California 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 involved in Internet sales of fragrance, cosmetic, and skin care products. It has 45 employees, an undisclosed gross annual income, and seeks to hire the beneficiary as a photographer. The director determined that the proffered position failed to qualify as a specialty occupation.

On appeal, counsel submits a brief and states that the petitioner has qualified the proffered position as a specialty occupation. Specifically, counsel asserts that the offered position meets all criteria contained in 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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.

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 set forth the duties of the offered position with the filing of the I-129 petition:

Sephora.com seeks to hire [the beneficiary] as the in-house Photographer. In this position, he will be responsible for providing digital and conventional photography in commercial applications for web site and magazine publication. He manages the photo studio and works closely with the Design Director and the West Coast Art Director to fulfill the photographic vision for the site.

He has primary responsibility for producing color and monochrome images digitally and on film. He styles individual and group products to highlight the best and unique characteristics of the product. He performs direct processing of color negatives, prints and transparencies. In fulfilling these tasks, he applies advanced digital image processing techniques to adjust tone, color, and scale for the best results for on-line image usage. He also operates and maintains analog and digital photography equipment including lighting, props, software and hardware in the photo studio. He coordinates his work with [the] Art Director to set priorities and deliver assignments on time. He is also charged with the task of keeping abreast of new digital imaging techniques and software. The position reports to the Sephora.com Art Director.

Sephora.com requires a Bachelor of Fine Arts degree in photographic imaging and one year of work experience in a commercial photography studio. In addition, the position requires proficiency in supporting software and hardware for digital and traditional photography.

Subsequent to the filing of the initiating petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner: provide a detailed job description with the percentage of time to be spent on each duty; provide evidence that the proffered position qualified as a specialty occupation; provide evidence that the duties of the position could not be performed by an individual with less than a baccalaureate degree; and provide copies of the petitioner's present and past job announcements for the offered position.

In partial response to the director's request, the petitioner provided the following job description:

#### **POSITION SUMMARY**

The Photographer provides photography required by Sephora.com and Sephora. He/she works with the creative team to fulfill photographic vision for the site and manages the photo studio.

#### **POSITION RESPONSIBILITIES**

- Operates and maintains analog and digital photography equipment including lighting equipment, props, software and hardware in the photo studio. (10%)
- Produces color and monochrome images digitally and on film. (50%)
- Styles individual/group products to highlight the best and unique characteristics of the product. (20%)
- Direct processing of color negatives, prints, and transparencies. (3%)
- Applies digital image processing techniques to adjust tone, color, and scale for the best results for online image usage. (10%)
- Communicates and coordinates with [the] Art Director to set priority and to make sure assignments are delivered on time. (5%)
- Keep abreast of most current digital imaging techniques and new software. (2%)

The director denied the petition stating that the proffered position failed to qualify as a specialty occupation. Specifically, the director held that the position did not meet any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits additional information and asserts that the proffered position qualifies as a specialty occupation. Specifically, counsel states that the offered position meets all four criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has qualified the offered position as a specialty occupation. The duties associated with the proffered position are set forth in the U.S. Department of Labor's *Occupational Outlook Handbook*, 2002-03 edition, (*Handbook*) at 140:

*Commercial and industrial photographers* take pictures of various subjects, such as buildings, models, merchandise, artifacts, and landscapes. These photographs are used in a variety of media, including books, reports, advertisements, and catalogs.

Photographers must possess both technical expertise and creativity to produce commercial quality photographs. Freelance and portrait photographers obtain training through degree programs, vocational training, or extensive work experience. Entry-level positions in photojournalism, industrial, or scientific photography, however, normally require a college degree in journalism or photography. *Id.* at 141. The *Handbook* groups commercial and industrial photographers together when describing the duties of the positions. It would, therefore, follow that entry-level positions for commercial photographers also normally require a college degree in photography.

The proffered position in this instance is a commercial photographer that photographs merchandise for mass marketing/national marketing campaigns via the Internet and magazine advertising. The petitioner's parent company is an international company with over \$11,000,000,000 in gross annual sales, and a net annual income exceeding \$670,000,000. The proffered position qualifies as a specialty occupation in that it meets the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The director's sole reason for denying the I-129 petition was that the proffered position did not qualify as a specialty occupation. As such, the director did not comment on the beneficiary's qualifications to perform the duties of the specialty occupation. The record is sufficient, however, to determine whether the beneficiary qualifies to perform the duties of a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184 (i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) completion of such experience in the specialty equivalent to the degree, and
  - (ii) 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 perform services in a specialty occupation, the beneficiary 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation 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;

- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent or the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The beneficiary possesses a Bachelor of Fine Arts Degree in Photography from the Academy of Art College in San Francisco, CA. The beneficiary is, therefore, qualified to perform the duties of the specialty occupation in that he meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

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. The appeal shall accordingly be sustained, and the petition will be approved.

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