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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

Identifying data deleted to
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File: EAC-02-149-51897

Office: VERMONT SERVICE CENTER

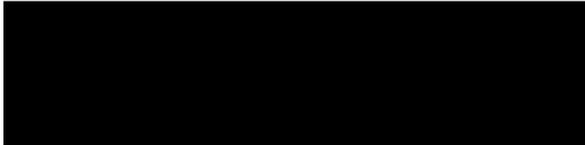
Date: 10/21/2003

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)

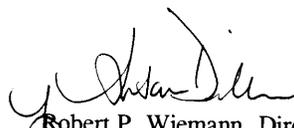
ON BEHALF OF PETITIONER:



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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded for further consideration.

The petitioner is a non-profit organization engaged in tourism. It has two employees and no gross annual income. It seeks to employ the beneficiary as a graphic designer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that a baccalaureate degree is the normal minimum requirement for a graphic designer position.

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 proffered position is that of a graphic designer. A review of the Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, at page 122, finds that a bachelor's degree is required for most entry-level design positions. 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 the regulations.

The director has not determined whether the beneficiary is qualified to perform the duties of the specialty occupation. It is noted that, although the record contains copies of a Bachelor of Fine Arts degree and a Master of Arts degree conferred by U.S. universities, the record does not contain copies of the beneficiary's university transcripts to show that he has the required background for a graphic designer position. Furthermore, the beneficiary's I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, that was issued on August 18, 2000, for the beneficiary's initial attendance, indicates that the normal length of study for the master's program is three years. The beneficiary's Master of Arts diploma, however, was signed in May 2001, approximately nine months after the issuance of the I-20. In addition, the address on the I-129 petition and on the labor condition application appear to be the beneficiary's residential address that is listed on Form I-129W, rather than the address listed on the petitioner's letterhead: [REDACTED]

[REDACTED] Also noted is that, on the petitioner's bank statement, the beneficiary is named as the petitioner's president, although the beneficiary's name has been covered with white-out. This conflicts with information in the

record that reflects Vincent Herbert as the petitioner's president. The record contains no explanation for these discrepancies. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.