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

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
425 I Street, N.W.
Washington, DC 20536



NOV 19 2003

File: SRC 03 146 54589 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:



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

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 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, Texas Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a corporation formed by [REDACTED] a Spanish language broadcasting network in the United States owned by NBC, and RTI, a Colombian television network. The Telemundo network has 600 employees with a gross annual income of \$130,000,000. It seeks to temporarily employ the beneficiary as a supervising producer for the production of a U.S.-based telenovela series for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that documentation from the Department of Labor's (DOL) Bureau of Labor Statistics (BLS) on the field of television broadcasting and other documentation is sufficient to establish that the proffered position is a specialty occupation. In addition, counsel asserts that the complexity and specialized nature of the position also establishes that it is 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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the Texas Service Center on April 29, 2003, the petitioner described the duties of the proffered position as follows:

[The beneficiary] will draw upon her education in communications and journalism and her extensive experience in television production with RTI's distinctive telenovela production requirements and style to direct various production activities, through a team of two field producers, including preparation of daily filming schedules, rental and/or purchase of necessary equipment, and assurance of adequate staffing of personnel from technical crews to actors and actresses. [The beneficiary] will also oversee processes such as special effects and liaison with [t]echnical, [e]nvironmental, [w]ardrobe, [m]ake-up, and [s]cripting [d]epartments. In this regard, she will assist in the coordination of various aspects of production such as special effects, audio work, scenes, timing, as well as assure placement and availability of actors/actresses at the appropriate time and in the appropriate place for various telenovela programs. She will also utilize her education and experience to breakdown productions [sic] scenes using DAPRO software.

The petitioner also stated that its business was the result of a new venture formed to produce telenovela programs in the United States. The petitioner described the telenovelas as soap operas and specialized programs of six months length that were unique to the Spanish language television industry. The programs would be broadcast by the Telemundo network, which the petitioner described as the second largest Spanish language network in the United States. According to the petitioner, Radio y Television (RTI) is a Colombian entity that has produced telenovelas outside the United States.

On May 3, 2003, the director requested further evidence. In particular, the director asked the petitioner to provide a more detailed job description for the position of supervising producer, and how the duties of the position fit into the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). In particular, the director requested more evidence that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

In response, the petitioner provided the following additional information on the proffered position:

The described supervising producer position is an integral component of our production of successful television programs in the highly specialized television genre of telenovelas. [The beneficiary] works side-by-side with numerous other senior level professionals including the director, art director, and director of photography as well as executive level managers. This position requires extensive knowledge of complex television production practices and strategies, as well as in-depth knowledge of a myriad of creative factors which affect budget, quality, and timeliness.

In the production of telenovelas, which will be the core focus of Telemundo-RTI's new venture, it is important to create and maintain a balance between logistics, budget and quality as these aspects directly impact the creative aspects of the production. In this key professional assignment, the [s]upervising [p]roducer is responsible for managing essential day-to-day production activities to create the overall look and sound of our telenovela television programs. The [s]upervising [p]roducer will be responsible for collaborating with television executives, the director, the art director and the director of photography to establish parameters to achieve the best television production possible within budget. . . .

The [s]upervisory [p]roducer is also responsible for contributing to the overall creative direction of the production which requires knowledge of communications, as well as audio and visual arts. In this vital professional assignment, the [s]upervising [p]roducer will function at a senior level, with key responsibility for managing a team of junior producers and providing key guidance for their production teams. The [s]upervising [p]roducer will employ complex creative skills such as color theories, analysis and interpretation of images, drama, and narrative structures, all necessary skills used on a daily basis in the producing and filming of a telenovela. The [s]upervisory [p]roducer will utilize her education and expertise as well as her professional production experience to collaborate with Telemundo-RTI's production

teams to define, develop, and implement creative production strategies based upon her analysis of our storylines in the context of telenovela production, production timeless, and resource allocation.

In addition, the petitioner also submitted an excerpt on radio and television broadcasting from the Department of Labor's (DOL) *Career Guide to Industries*, taken off of the Bureau of Labor Statistics (BLS) website at <http://www.bls.gov/oco/cg/cgs019.htm>. The petitioner also submitted a page from an Internet website named America's Career Infonet that stated the typical educational/training level for producer and directors was a baccalaureate or higher degree, plus work experience. The source for this information was noted as the BLS, Office of Employment Projections. The petitioner also submitted an advisory opinion from Daniel C. Hallin, Chair, Department of Communications, University of California, San Diego. Dr. Hallin offered his opinion on the academic requirements for the proffered position.

On June 5, 2003, the director denied the petition. In her decision, the director discounted the BLS excerpt and found the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of entertainers and performers, sports and related occupations, to be applicable to the instant petition. The director found that the *Handbook* stated that there are "no specific training requirements for producers, and that "no formal training exists for producers; however, a growing number of colleges and universities now offer degree programs in arts management and managing nonprofits." With regard to Dr. Hallin's advisory opinion, the director found that the various references he made in his opinion with regard to the need for training perhaps indicated that the proffered position could be done with sufficient training and experience and that a degree was not a prerequisite to do the job. The director also examined the *Handbook* classifications of media and communication-related occupations, and news analysts, reporters, and correspondents. The director determined that neither of these job classifications required a baccalaureate degree for entry into the position. Finally, in reference to Dr. Hallin's advisory opinion, the director cited to *Matter of Caron International, Inc.* 19 I&N Dec. 791 (Comm. 1988).

On appeal, counsel asserts that the petitioner provided sufficient evidence, including the BLS documentation and Dr. Hallin's advisory opinion, to establish that a baccalaureate degree is necessary for entry into the proffered position, and that the industry standard for the position of producer was a baccalaureate degree or the equivalent in journalism, communications or a related field. Counsel states that the director took out of context the few instances in which Dr. Hallin used the words "academic training and/or professional experience in communications or a related area." Counsel states that the totality of Dr. Hallin's letter makes it clear that a degree is essential for entry into the position.

In addition, counsel asserts that the petitioner, through its submission of a detailed job description, had also established that the position is a highly specialized job involving the management of a staff of producers engaged in day-to-day production activities for a major production of a leading television network.

Citizenship and Immigration Services (CIS) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. Nevertheless the *Handbook* classifications identified by the director in her decision do not appear relevant to the duties of the proffered position. For example, the *Handbook* subcategory of producers on page 124 contains job duties such as hiring directors, and negotiating contracts with artistic and design personnel. These duties appear more applicable to financial backers or producers of a particular theatrical or television production, rather than to a mid-level supervisory producer of television mini-series. The petitioner's job description contains no mention of negotiation of contracts, or the hiring of personnel. In addition, the *Handbook* section on training requirements for producers, with its reference to degree programs in arts management and managing nonprofits, appears irrelevant to the proffered position. As such the *Handbook* classification does not provide any conclusive information with regard to educational requirements for the proffered position.

Given the dearth of specific information on television producers in the *Handbook*, it does not appear inappropriate to utilize the information contained in the BLS *Career Guide to Industries* in this proceeding. On its website at <http://www.bls.gov/oco/cg/home.htm>, the *Career Guide to Industries* describes itself as a "companion" to the *Handbook*. While the BLS classification identifies the broadcast industry as television stations as opposed to television networks, the excerpt speaks more directly to the duties of personnel involved in television production and broadcast. In addition the BLS document also contains the following commentary on the training for personnel involved in the production of television broadcasts:

Professional, management, and sales occupations generally require a college degree; technical occupations often do not. It is easier to obtain employment and promotions with a degree, especially in larger, more competitive markets. Advanced schooling is generally required for supervisory positions-including technical occupations-having greater responsibility and higher salaries.

Entry-level jobs in news or program production increasingly require a college degree and some broadcast experience.

The BLS excerpt does establish that the proffered position, which is not an entry-level position, would require a baccalaureate degree in a specific specialty. Thus, the petitioner has established the first criterion of 8 C.F.R. § 214.2(h) (4) (iii) (A).

The multiple layers of the proffered position, which involve the supervision of two producers, the preparation of daily filming and staffing schedules, and production breakdowns, and oversight of special effects and other activities in both the technical and artistic department, add to the complexity of the position. The fact that the petitioner is producing these programs for the second largest Spanish-language television network in the United States would also indicate the level of job responsibilities encompassed in the proffered position. It does not appear excessive that the petitioner would require that the beneficiary have a baccalaureate degree in communications, broadcasting or a closely related field. In sum, based on the more specific information presented by the BLS *Career Guide to Industries*, and on the nature of the duties of the proffered position, the petitioner has established that the supervisory producer position is a specialty occupation.

With regard to the beneficiary's qualifications, the petitioner submitted an educational equivalency report from the Foundation for International Services, Inc. The petitioner also submitted copies of the beneficiary's baccalaureate diploma from the Javier Pontifical University in Bogota, Colombia, in social communication with a specialization in journalism, and her attendance certificate for her coursework in journalism from the same university. The Foundation found the beneficiary's university studies to be the equivalent of a baccalaureate degree in communications with a specialization in journalism from an accredited U.S. college or university. As such the petitioner has established that the beneficiary is qualified for the proffered position.

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 decision of the director will be withdrawn and the appeal will be sustained.

ORDER: The decision of the director is withdrawn and the appeal is sustained. The petition is approved.