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

**DZ**

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



FILE: WAC-01-296-52038

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

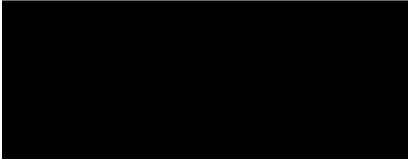
IN RE: Petitioner:  
Beneficiary:



**NOV 26 2003**

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)

IN BEHALF OF PETITIONER:



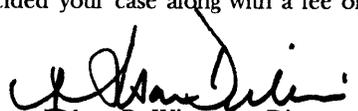
INSTRUCTIONS:

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

The petitioner is an independent film producer that employs five persons and has an undisclosed gross annual income. It seeks to employ the beneficiary as an associate producer. The director denied the petition because the petitioner failed to establish that the offered position qualified as a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the offered position qualifies as a specialty occupation.

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 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 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 fields 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's letter, accompanying the I-129 petition, delineated the beneficiary's duties as follows:

- [C]oordination of activities of personnel engaged in the writing, directing, editing, and production of motion pictures. She will review synopsis and scripts and help direct adaptations for the screen.
- [D]etermine the treatment and scope of proposed productions and help establish operating budgets.
- [S]elect principal members of cast and key production staff members.
- [R]eview film scenes of daily shootings, orders retakes[,] and approve[s] final editing of filmed productions.
- [R]eview incoming scripts and conduct meetings with the [d]irector, [w]riters and other staff members to discuss production progress.
- [F]ormulates business management policies and coordinate production schedules.

Counsel's letter, dated September 24, 2001, stated that candidates must possess, at minimum, a bachelor's degree in cinema and audiovisual studies.

On November 29, 2001, the director requested additional evidence: (1) an explanation of why the position required the services of a person possessing a college degree in the occupational field; (2) an advisory evaluation of the beneficiary's foreign educational credentials by a reliable credentials evaluation service that specializes in evaluating foreign educational credentials; (3) a certificated labor condition application; and (4) copies of the beneficiary's passport pages.

In response to the request, the petitioner submitted: (1) an advisory evaluation from The Trustforte Corporation stating that the beneficiary's foreign educational credentials are equivalent to a bachelor of arts degree in arts management; (2) the beneficiary's transcripts translated into the English language; (3) a letter from Goren Productions Ltd. certifying the beneficiary's employment from November 1998 to September 1999; (4) information about a film produced by the beneficiary; (5) information about film schools; (6) a labor condition application; and (7) copies of the beneficiary's passport pages.

Counsel also submitted a letter reiterating the previously described duties of the offered position. The letter asserted that the position's duties are highly sophisticated and complex; the industry standard is to require a bachelor's degree in a corresponding field; and that the letters from two production companies, Cohort Productions and Golden Glen Entertainment, submitted with the response, attested to this.

The letter from [REDACTED] stated:

[I]n our industry, for the position of [a]ssociate [p]roducer, and the job duties we have delineated for the individual to perform[,] we have solicited and hired only persons who have a film degree from an accredited institution of higher learning.

We have only interviewed individuals who have at least an initial degree in filmmaking for that position. We have found that candidates with such degrees are best suited for the position of [a]ssociate [p]roducer with the duties specified.

Currently, we are working only with individuals who have such a degree in those positions.

The letter from Golden Glen Entertainment repeated, verbatim, the statements made by [REDACTED]

On May 14, 2002, the director denied the petition, finding that the position did not qualify as a specialty occupation. Under the 2000-2001 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the position was shown, according to the director, as falling under the category of actors, directors, and producers. The director stated that the *Handbook* mentioned that there are no specific training requirements for directors and producers, that they come from many different backgrounds, that producers often start in the industry working behind the scenes with successful directors, and that formal training in directing and producing is available at a number of colleges and universities. To gain experience, the

*Handbook* stated, actors and directors take part in high school and college plays; they work with little theatres and other acting groups; they use local opportunities and build on them; they may obtain formal dramatic training or acting experience; and they take college courses in theatre, arts, drama, and dramatic literature.

The director concluded that, notwithstanding the petitioner's assertion that the offered position required a bachelor's degree in cinema and audiovisual studies, the *Handbook* stated that the offered position would not require a bachelor's degree; accordingly, the director found the offered position was not a specialty occupation.

On appeal, counsel furnishes information about several film producers, accredited members of National Association of Schools of Theatre (NAST), information about the Tisch School of the Arts, and letters from two production companies.

Counsel asserts that the offered position is a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. According to counsel, the position has been assigned a specific rating in the *Occupational Information Network (O\*Net)*, and that most jobs with this rating require a bachelor's degree. Counsel's argument is weak because the *O\*Net* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, Citizenship and Immigration Services (CIS) is not persuaded by a claim that the proffered position is a specialty occupation simply because it has a specific rating in the *O\*Net*.

Thus, the 2002-2003 edition of the *Handbook* is instructive in determining whether the offered position normally requires a baccalaureate or higher degree or its equivalent as the minimum requirement for entry into an occupation. The *Handbook*, on page 124, states that producers oversee the business and financial decisions of a production, and they select scripts and approve development of script ideas, among other duties. On page 125, the *Handbook* reports that there are no specific training requirements for producers; they come from any different backgrounds: many people who start out as actors move into directing; producers often start in a theatrical management office, working for a press agent, managing director, or business manager; some start in a performing arts union or service organization; others work behind the scenes

with successful directors, serve on boards of directors, or promote their own projects. The *Handbook* explains 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.

Counsel also asserts that the proffered position is a specialty occupation because the movie industry has changed. Prior to the 1970's, producers and others involved in the industry were primarily from different and varied backgrounds and did not necessarily possess a college degree. Today, counsel claims, most important movies are produced by people, such as Martin Scorsese, Bob Gosse, and James Gray, who come from highly regarded colleges, and counsel furnishes information about the producers. Counsel's claim, although relevant, is without merit. As the *Handbook* reveals, there are no specific training requirements for producers, and although a growing number of colleges and universities now offer degree programs in arts management and managing nonprofits, employers do not require producers to possess a bachelor's degree or higher from these programs.

Counsel also states that the offered position requires a bachelor's degree in a specific specialty - cinema, film and/or audiovisual studies - and that this specialty offers a direct relationship to the offered position because it brings a strong theoretical and practical background to the film industry. However, according to the *Handbook*, a bachelor's degree is not normally the minimum requirement for entry into the offered position, and the evidence in the record fails to support counsel's statement. For example, the letters from Cohort Productions and Golden Glen Entertainment fail to specify the duties of their associate producer positions. And, more important, doubt is cast on the credibility of the letters because the language of the two letters is virtually identical, even though the letters are allegedly written by two different companies. Therefore, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Counsel, on appeal, alleges that it's rare that a specific degree is required for any profession. For example, counsel asserts that an accountant does not require a degree in accounting in order to become an accountant. Counsel's allegation is groundless. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires the 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. Thus, to qualify as a specialty occupation a bachelor's degree in a specific specialty must be the minimum requirement for entry into

the offered position. Furthermore, it's common knowledge that a specific degree is required for positions in which a theoretical and practical application of a body of highly specialized knowledge is necessary to perform the duties of the position. For example, it's common knowledge that to work as a civil engineer a person would require an engineering degree, and the same holds true for architecture: a person cannot design a building if she did not possess a degree in architecture. Therefore, counsel's allegation, that it's rare that a specific degree is required for any profession, is without merit.

To satisfy the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), counsel alleges that most employers prefer a degree in film, cinema, or the audiovisual field, and counsel provides letters from two production companies to support this allegation. Counsel also states that the most important films are produced by highly educated and trained persons who come from highly regarded colleges, and counsel also asserts that, according to the National Association of Schools of Theatre (NAST), there are over 128 colleges and universities that offer degrees in the film, cinema, and audiovisual studies, and that NAST was formed to improve and maintain professional standards in theatre education.

Counsel's assertions are not persuasive to show that the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the offered position is so complex or unique that it can be performed only by a person with a degree. Factors often considered by CIS when determining the industry standard include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook* states that candidates are not required to possess a bachelor's degree for the position of producer, and the record does not show that NAST states that a bachelor's degree is an industry standard. Moreover, although some films are produced by persons who hold bachelor's degrees, according to the *Handbook*, employers do not require a bachelor's degree for the position. Last, the two letters from Cohort Productions and Golden Glen Entertainment are insufficient in themselves to establish an industry standard. Consequently, the petitioner fails to establish that the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the offered position is so complex or unique that it can be performed only by a person with a degree.

The petitioner has not established that it normally requires a degree or its equivalent for the position; thus, the petitioner fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), specifically, that 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 record fails to show that the nature of the duties requires a bachelor's degree in film, cinema, or the audiovisual field. And, the *Handbook* reports that a bachelor's degree is not required for the position of producer.

The petitioner fails to establish that the offered position, associate producer, qualifies as a specialty occupation.

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.

**ORDER:** The appeal is dismissed. The petition is denied.