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

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

[REDACTED]

File: LIN 02 034 53513

Office: NEBRASKA SERVICE CENTER Date:

OCT 14 2003

IN RE: Petitioner:
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:

[REDACTED]

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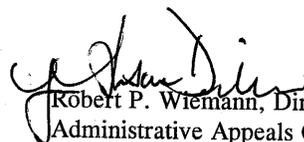
INSTRUCTIONS:

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

The petitioner operates a newspaper. It has 85 employees and a gross annual income of \$4,665,777. The petitioner seeks to employ the beneficiary as a staff photographer for a period of three years. 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 duties of the position are so complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree, and that the employer normally requires a degree or its equivalent for the position.

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

Taking digital photos[;] downloading the digital images into a computer program and mainpulating [sic] the size, color correction, [and] clarity[;] and [sic] archiving the photo onto a CD and placing into the photo library[;] [h]elp maintain and distribute reprints of staff photos[;] [w]ork with editors and reporters both in the office and on assignment to coordinate visual images with written copy for the daily publication of the newspaper[;] [and] take photos for editorial, sports and features departments.

Subsequent to the filing of the initiating petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner: submit a detailed description of the duties to be performed by the beneficiary; detail the amount of time the beneficiary would spend on each duty; and submit evidence that the proffered position qualifies as a specialty occupation. In response to this request, the petitioner submitted the following position description:

Our staff photographers photograph newsworthy events, locations, people, and other illustrative, commercial, and educational material for use in our newspaper using still and/or digital cameras. They travel to assigned locations and take pictures. They develop negatives and print film, then submit negatives and pictures to editors for publication. They scan digital pictures into a computer in preparation for publication, then store the images in electronic archives. Our photographers also write their own captions for pictures being published.

The photography staff works closely with news reporters and editors to discuss possible story ideas and their newsworthiness and development. With reporters and editors, they coordinate suggestion and selection of images suitable for stories. Staff photographers also work independently, planning and shooting pictures in the field of their own for both features and hard news.

Photographers must have both a journalist's keen sensitivity for the essentials of a story and an artistic eye for capturing assigned subjects in a creative and well-thought-out manner. They must be able to successfully convey the story through their pictures.

The following breaks down by percentage of time what a staff photographer does in the course of a typical day:

- (a) Shoot photo assignments for news, sports, and feature stories; develop and execute story ideas: 50%[;]
- (b) Consult with reporters and editors to plan and coordinate assignments and ensure that photographs reflect story content and other specifications: 10%[;]
- (c) Scan or transfer photographs into a computer and manipulate images in preparation for publication: 20%[;]
- (d) Write captions for photographs appearing in next edition: 10%[;] [and]
- (e) Store digital photograph files in [the] computer archive or data bank: 10%

The petitioner also submitted a document entitled "Staff Photographer Duties and Qualifications" which further explained the offered position, and the qualifications sought by the petitioner.

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. The duties associated with the proffered position are set forth in the *Occupational Outlook Handbook, 2002-03, (Handbook)* at 140:

News photographers, also called photojournalists, photograph newsworthy people; places; and sporting, political, and community events for newspapers,

journals, magazines, or television. Some news photographers are salaried staff; others are self-employed and are known as freelance photographers.

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 petitioner in this instance, however, does not require a baccalaureate or higher degree or its equivalent as the minimum requirement for entry into the proffered position. In its response to the director's request for evidence, the petitioner's publisher noted in her affidavit that a bachelor's degree was preferred for the position, not required. This is consistent with the petitioner's "Staff Photographer Duties and Qualifications" statement. In that document, the petitioner notes under the topic of education and/or experience required for the position: "Bachelor's degree from a four-year college or university; or two years related experience and/or training preferred." (Emphasis added). The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations, that the proffered position is so complex or unique that it can be performed only by an individual with a degree, or that the duties of the position are 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 did present the credentials of three employees indicating that they possessed bachelor's degrees in photography, journalism or communications. Again, however, the publisher's affidavit notes that the petitioner **prefers** a bachelor's degree or its equivalent, and that **recently** the petitioner had hired only applicants with a bachelor's degree. (Emphasis added). The petitioner has not established that it normally requires a degree or its equivalent for the 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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.