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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 269 55268 Office: CALIFORNIA SERVICE CENTER Date: APR 20 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a developer, manufacturer, and marketer of educational materials that seeks to employ the beneficiary as a technical director. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because: (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel states that the position qualifies as a specialty occupation and that the director overlooked the submitted evidence. Furthermore, counsel states that the beneficiary qualifies to perform the duties of the proffered position.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a technical director. Evidence of the beneficiary's duties includes: the Form I-129; the attachment to the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: overseeing the technical aspects of the video production department such as electronic editing and duplicating; reviewing the budget; directing production, scheduling, and staffing; procuring and maintaining equipment; inspecting the technical quality of video productions and resolving issues; organizing the physical media formats for recording; and conferring with suppliers of video materials and equipment. The petitioner stated that a qualified candidate for the job would possess a bachelor's degree or its equivalent in visual arts or communications, film or video production, or a related field.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that the beneficiary's duties were general managerial in nature, and not those of a position requiring professional skills. In addition, the director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation.

On appeal, counsel states that the director overlooked the extensive evidence, such as the Internet postings, establishing that the proffered position is a specialty occupation. Counsel, moreover, states that the petitioner submitted resumes of present and former employees, who possess a bachelor's degree or its equivalent, and who currently hold or have previously held the same or a similar position as that of the proffered position. Finally, counsel states that the submitted documentation establishes that the beneficiary is qualified to perform the duties of a specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

First, the AAO considers the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*1*) and (*2*): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook* (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." *See 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 AAO finds that the petitioner fails to establish the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In the response to the request for evidence, counsel referred to the *Handbook* to compare the duties of the proposed position with those of an industrial production manager. This comparison is not on point. Industrial production managers are found in manufacturing industries such as industrial machinery and equipment, transportation equipment, electronic and electrical equipment,

fabricated metal products, instruments and related products, and food and kindred products industries, or are self-employed. Because the petitioning entity does not manufacture a product such as video equipment or film, the AAO does not consider the petitioner as a manufacturer. As such, industrial production managers do not perform the duties of the proffered position.

On appeal, counsel contends that the submitted evidence establishes that the proffered position qualifies as a specialty occupation. The submitted evidence consists of: (1) the description of the proffered position; (2) three resumes of present and former employees; (3) pages from the *Handbook* describing an industrial production manager; and (4) information and job postings from The McGraw-Hill Companies and Pearson Education.

The petitioner's evidence fails to establish the first criterion. Upon review of the beneficiary's duties, the AAO finds that the level of responsibility associated with the duties would not require a baccalaureate or higher degree or its equivalent in a specific specialty as the normal minimum requirement for entry into the offered position. Furthermore, the submitted postings from Pearson Education and the McGraw-Hill Companies buttress this finding; they indicate that a candidate must possess a college degree, although not in a specific specialty, to perform the duties of the posted positions. Finally, the three resumes of present and former employees do not support counsel's contention that the proffered position requires a bachelor's degree or its equivalent in a specific specialty for entry into the proffered position. The resumes reveal that the employees' positions - film video editor, editor, and freelance segment producer - differ dramatically from the offered position. Moreover, the AAO cannot determine whether two of the employees hold the equivalent to a U.S. bachelor's degree in a specific specialty.

The petitioner's evidence fails to establish the second criterion: that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. The AAO has already discussed the deficiencies in the evidence. In addition, the petitioner did not substantiate its contention that a degree requirement is common industry-wide by submitting letters from its industry's professional association stating that the industry has made a degree a minimum entry requirement, or letters or affidavits from firms or individuals in the industry attesting that such firms "routinely employ and recruit only degreed individuals." Thus, the petitioner fails to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

As previously discussed, the submitted resumes do not establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent in a specific specialty for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. According to the petitioner's September 10, 2002 letter, the duties of the proffered position require a theoretical background in project management theories and methodologies relating to video production. Yet, the evidence in the record fails to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Simply going on record without supporting documentary evidence is not sufficient for

the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary's qualifications.

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.