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U.S. Citizenship
and Immigration
Services

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FEB 26 2004

FILE: EAC 02 267 53077 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

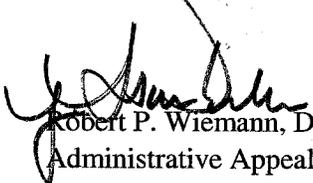
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) (i) (b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i) (b)

ON BEHALF OF PETITIONER:



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

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

The petitioner is a social services agency and advocacy group established in part through the Archdiocese of New York to provide services to the Mexican immigrant community in New York. It seeks to employ the beneficiary as a graphic designer. 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 the proffered position is not a specialty occupation. On appeal, counsel describes the position as an illustrator and provides further documentation of the petitioner's graphic arts and communications products.

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.

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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a graphic designer. Evidence of the beneficiary's duties includes: the I-129 petition; and the petitioner's October 14, 2002 letter in response to the director's request for further evidence. According to this evidence, the beneficiary would perform duties that entail: designing art and copy layouts for material to be presented by visual communication media such as books, magazines, newspapers and television; researching illustrations and photographs to plan presentation of material for videotapes, brochures and magazines; determining the size of illustrative material and copy; selecting style and size of type, arranging layout based upon available space; drawing sample of finished layout for approval; preparing notes and instructions to assemble and prepare final layouts for printing of brochures and advertisements; and keying information into computer to create educational tapes. The petitioner also explained that it attempts to reach the community through various types of communication and the most important way of reaching the community is through videotapes for public TV, articles in magazines, newspapers and brochures. The petitioner further added that it had a documentary currently running at scheduled times, with six more productions accepted for multiple broadcast on Channel 41 in Spanish. The petitioner indicated that a candidate for the position must have both education and experience in the field of graphic design.

The director found that the proffered position was not a specialty occupation because the petitioner had not provided specifics as to the skills needed to perform the job. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel describes the proffered position as a graphic artist but refers to the *Handbook* description of artists and related workers, rather than the *Handbook's* description of graphic designers. Counsel also submits samples of the graphic arts work produced for the petitioner to communicate with the Mexican community in New York. The graphics work includes brochures, advocacy and social events pamphlets, layouts for the Tepeyac Television Service and a monthly bulletin.

Upon review of the record, the petitioner has established the first criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A)- namely, whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. In the instant petition, the proffered position appears to be a graphic artist involved in the design of various media outlets, including brochures, television, and a monthly publication. With regard to the occupation of graphic designer, the 2002-2003 edition of the *Handbook* on page 121 states the following:

Graphic designers use a variety of print, electronic, and film media to create designs that meet clients' commercial needs. Using computer software, they develop the overall layout and design of magazines, newspapers, journals, corporate reports, and other publications. They also may produce promotional displays and marketing brochures for products and services, design distinctive company logos for products and businesses, and develop signs and signage systems. . . .

With regard to educational or training requirements for designers, the *Handbook*, on page 122 states: "A bachelor's degree is required for most entry-level design positions, except for floral design and visual merchandising." The *Handbook* information clearly indicates that employers require a baccalaureate degree in design or a related field for entry into the field of graphic designer. In addition, the samples of graphic arts designs for various media outlets that the petitioner submitted on appeal establish the range of duties and

skills necessary for its graphic designer position. Thus, the petitioner established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

In addition, the petitioner also provided sufficient documentation to establish the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)-R. § 214.2(h)(iii)(A)(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. Both the materials submitted on appeal and the petitioner's website document a range of programs and media products for which graphic arts products would be generated by the beneficiary. See www.tepeyac.org for an overview of the petitioner's cultural, social, and advocacy projects. The multiple types of design products, including brochures, design work for the petitioner's television programming, and for the petitioner's community-wide advocacy projects establish the complex nature of the duties of the proffered position. It does not appear excessive that the petitioner would require a baccalaureate degree in design and/or communications for the proffered position. Thus, the petitioner has established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to the beneficiary's qualifications to perform the duties of the proffered position, the petitioner submitted an educational equivalency document written by Dr. [REDACTED] Dr. [REDACTED] stated that the beneficiary's baccalaureate degree in design (visual communications) from a Mexican institute of higher education was the equivalent of a baccalaureate degree in design from an accredited U.S. educational institution. Thus the petitioner has established that the beneficiary is qualified to perform the duties of the proffered position.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall withdraw the director's decision of November 1, 2002 and shall approve the petition.

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.

ORDER: The director's decision of November 1, 2002 is withdrawn. The petition is approved.