

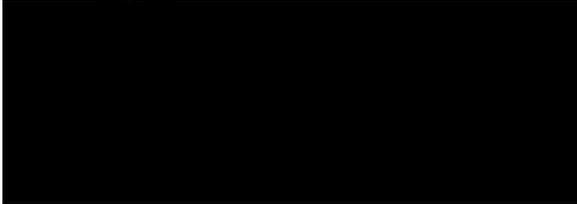
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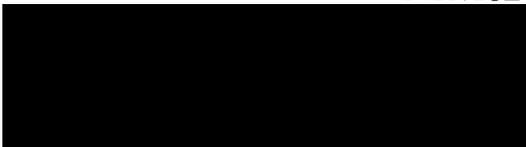
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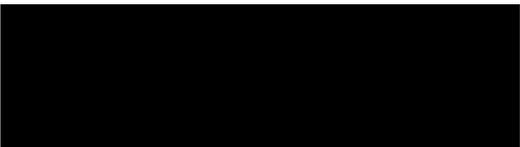
FILE: WAC 01 032 52308 Office: CALIFORNIA SERVICE CENTER Date: JAN 22 2015

IN RE: Petitioner:
Beneficiary:



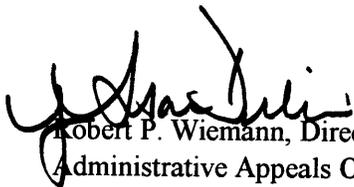
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



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 an optical lens/fiber optic research company that seeks to employ the beneficiary as an industrial photographer. 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 submits a brief.

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 with the petitioner's supporting statement. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an industrial photographer. Evidence of the beneficiary's duties includes the I-129 petition and the petitioner's response to the director's request for

evidence. According to the July 11, 2001 response to the request for evidence, the beneficiary would perform duties that entail, in part:

Set up with precision photographic sequences of miniscule movement of the photorefractivity of crystals in lenses;

Record photographically through microscopes the scattering of atoms of optical fiber (glass) used in communications;

Photograph changing composition of minute particles of stored optical materials for research into most effective temperature and storage system to retard decomposition;

[and] use still and motion cameras to record electronically laser beams coupling (merging) and phasing (changing) upon different uses of laser lenses when different subjects are used such as in astigmatism eye correction.

The director found that the proffered position was not a specialty occupation.

On appeal, counsel states that the director misinterpreted the Department of Labor's *Occupational Outlook Handbook (Handbook)* to read that a degree is not required for the proffered position.

Upon review of the record, the petitioner has established that at least one the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A) applies to the proffered position. Therefore, the proffered position is a specialty occupation. In making this decision, the AAO turns to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

Factors often considered by CIS when determining these criteria 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." 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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A review of the Photographer job description in the *Handbook* confirms that a baccalaureate degree is normally required: "Entry-level positions in photojournalism, industrial, or scientific photograph generally require a college degree in journalism or photography."

Although the petitioner did not submit any evidence regarding parallel positions in the petitioner's industry, the *Handbook* is clear about what is normally required for a position such as that offered to the beneficiary.

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 appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.