



U.S. Citizenship
and Immigration
Services

D-2



FILE: EAC 02 103 53419 Office: VERMONT SERVICE CENTER

Date: JUL 8 2004

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DO NOT
prevent clearly inadmissible
disclosure of information

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 purchases, overhauls, and sells used trucks and truck chassis. In order to employ the beneficiary as an industrial designer, the petitioner endeavors to classify her 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 on the grounds that the evidence did not establish that the proffered position qualified as a specialty occupation in accordance with any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). As an additional basis for denying the petition, the director also stated, "As you are a relatively small truck dealership, it does not appear that the nature of your business is such that it requires the services of a professional industrial designer."

On appeal, counsel submits a brief and additional exhibits.

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.

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) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief with its attached exhibits. The decision on this appeal is based on the AAO's review of the entire record.

As discussed below, the evidence establishes that the proffered position is a specialty occupation in accordance with the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which qualifies positions whose normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position's duties.

The director was incorrect in finding that the nature of the petitioner's business does not justify the proffered position. On the contrary, the evidence of record on the petitioner's client base, gross income, and business growth substantiated the petitioner's averments that the addition of the proffered position is a reasonable business move that is motivated by the desire to enhance profits.

For the sake of brevity, the AAO offers this very compressed and generalized description of the proffered duties, which are described in much more detail in the record: graphic-design development and application of signage for trucks in accordance with truck purchasers' desires; design and artwork for the petitioner's business cards, newspaper and magazine advertisements, and promotional brochures; and upkeep of the graphics on the petitioner's Website.

The petitioner's job title "industrial designer" does not accurately reflect the nature of the position. Rather, the proposed duties substantially comport with the graphic designer occupation as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations.

The *Handbook's* statement that "most" entry-level design positions (excluding floral designing and visual merchandising) require a bachelor's degree does not establish that such positions normally require at least a bachelor's degree in a specific specialty. Also, the AAO agreed with the director's evaluation that the job vacancy announcements from other companies had no evidentiary value. On the other hand, while not determinative, the Industrial Design Society of America information and the letters submitted from the industrial design field were considered as evidence that a business such as the petitioner could have a genuine need for a person with a bachelor's degree in design. The AAO finds that the combination of this industry information, the evidence about the proffered position, and the *Handbook's* information establishes that this particular proffered position is a specialty occupation as defined at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The next inquiry is whether the beneficiary is qualified to serve in the position in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C). According to this regulatory provision, to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record includes an evaluation by International Credentials and Evaluation and Translation Service that the beneficiary's foreign degree in industrial design from the Federal University of Pernambuco is the equivalent of a U.S. bachelor of science degree in industrial design. This evaluation, corroborated by the translated copy of the beneficiary's grade transcript, established that the beneficiary is qualified to serve in the pertinent specialty occupation in accordance with the provision at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) for qualifying beneficiaries who "[h]old a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university."

In summary, based on the evidence of record, the appeal should be sustained, and the petition should be approved.

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 appeal is sustained. The petition is approved.