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U.S. Citizenship  
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DA

FILE: EAC 02 269 51230 Office: VERMONT SERVICE CENTER

Date: JUL 28 2006

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.

*Mari Johnson*

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 dismissed. The petition will be denied.

The petitioner is a church that seeks to employ the beneficiary as its media project director. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a letter, and a brief signed by the petitioner.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

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) 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 its media project director. Evidence of the beneficiary's duties includes: the I-129 petition; counsel's August 21, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: managing and directing media productions, such as TV and radio programs and print media; creating, managing, and producing all media events; evaluating technical aspects of the production, such as requirements for audio systems, lighting, video imaging, and staffing of technical personnel; determining time frame, budget limitation, procedures for achieving projects, staffing requirements, and allotment of resources; assigning duties and responsibilities to project staff; and preparing project reports for the senior pastor. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in production management.

The director found that the proffered position was not a specialty occupation because the petitioner had not demonstrated that the position requires the services of a degreed professional. 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, the petitioner asserts, in part, that the proposed duties, which entail creating, managing, and producing all of the petitioner's media events, are so complex that a baccalaureate degree or equivalent experience is required. The petitioner further states that the record contains expert opinions from Dr. Dennis J. Oneal, a professor of the Department of Electronic Media Communication at the College of Mass Communication, Middle Tennessee State University, and Dr. Kenneth Portnoy, a professor of the Cinema and Television Arts Department at California State University, Northridge, in support of his assertion.

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.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent 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 (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. The AAO does not concur with counsel and the petitioner that the proffered position is a specialty occupation. The proffered position is similar to the media director position that is described on page 23 of the *Handbook*, 2004-2005 edition, under the category of Advertising, Marketing, Promotions, Public Relations, and Sales Managers. The DOL describes the media director position as follows: "The *media director* oversees planning groups that select the communication media – for example, radio, television, newspapers, magazines, Internet, or outdoor signs – to disseminate the advertising." No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a media director job.

The opinions from Dr. Dennis J. Oneal, a professor of the Department of Electronic Media Communication at the College of Mass Communication, Middle Tennessee State University, and Dr. Kenneth Portnoy, a professor of the Cinema and Television Arts Department at California State University, Northridge, are noted. Both professors assert that positions such as the proffered position require the minimum of a bachelor's degree in production management, and that this degree requirement is industry wide. Neither professor, however, provides any evidence in support of his assertions. 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). Additionally, much of the text of the letters is identical. Thus, the AAO must question whether the opinions expressed in each letter are the views of each author.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for various media-related positions. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. For example, the advertisers include a full-service marketing, Internet, and advertising agency, a sporting goods chain, and a multi-billion dollar global communication company. The petitioner has not submitted any job postings for a church-related media director. Thus, the advertisements have little relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, the petitioner states that the proffered position is a new position, and currently volunteers are performing the duties of the proffered position. As such, the petitioner has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. For this reason, the petition may not be approved.

The AAO will now address the director's conclusion that the beneficiary is not qualified to perform a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has

experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), 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 director found that the beneficiary was not qualified for the proffered position because the petitioner had not sufficiently demonstrated that beneficiary's employment was equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel submits an amended certificate of the beneficiary's work experience to demonstrate that he qualifies for the proffered position. Counsel also submits a second academic opinion to demonstrate that the beneficiary is qualified for the position because he holds the equivalent of a bachelor's degree.

The record contains the following documentation related to the beneficiary's qualifications:

- Certificate of Graduation from high school;
- Certificate of Work Experience, dated November 25, 2002, from the president of the Korean business, [REDACTED] who states, in part, that the beneficiary was employed as a project director from January 1998 to August 2001, performing duties that included, in part: planning, managing, and producing broadcasting-related events and programs; evaluating the technical aspects of the production; and determining the time schedule, budget, and staffing;
- Certificate of Work Experience, dated December 2, 2002, from a cameraman of the Korean business, On-Air, a producer of various programs and commercials that closed in August 2001, who states, in part, that the beneficiary was employed as a project director from October 1993 to December 1997, [performing the identical duties he performed at Bit Media];
- Certificate of Work Experience, dated December 2, 2002, from the producer of the Korean business, Panavision, a producer of TV programs and commercials that closed in 1995, who

states, in part, that the beneficiary was employed as a project director from January 1990 to September 1993, [performing the identical duties he performed at ██████████]

- Certificate of Work Experience, dated November 28, 2002, from the president of the Korean business, ██████████ producer of TV programs and commercials, who states, in part, that the beneficiary was employed as a project director from May 1988 to December 1989 [performing the identical duties he performed at ██████████]
- Amended Certificate of Work Experience, dated April 16, 2003, from the president of the Korean business, OONN (██████████) who states, in part, the beneficiary was employed as an assistant project director from May 1988 to April 1989, and as a project director from May 1989 to December 1989; and
- Opinions from ██████████ a professor of the ██████████ Communication at the College of Mass Communication, ██████████ and ██████████ a professor of the Cinema and Television Arts Department at California State University, Northridge, who both conclude that the beneficiary's 13 years of employment experience are equivalent to bachelor's-level training in production management.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in production management. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains opinions from [REDACTED] a professor of the [REDACTED] of Mass Communication, [REDACTED] Portnoy, a professor of the Cinema and Television Arts Department at [REDACTED] Northridge, who both conclude that the beneficiary's 13 years of employment experience are equivalent to bachelor's-level training in production management. Both professors based their opinions, in part, on the "original documents" provided by the beneficiary. Although neither professor describes specifically what comprises these "original documents," it is presumed that they are the certificates of work experience listed above. With the exception of the amended certificate of work experience, however, the text of the four certificates of work experience submitted originally is identical. Thus, the AAO must question whether the opinions expressed in each letter are the views of each author. For this reason, the opinions from Drs. Oneal and Portnoy carry no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>1</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

The AAO must now determine whether the beneficiary's prior work experience included the theoretical and practical application of specialized knowledge required by the specialty. As stated previously, with the exception of the amended certificate of work experience, the text of the four certificates of work experience submitted originally is identical. The AAO, therefore, questions whether the opinions expressed in each letter are the views of each author. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge. Furthermore, these certificates of work experience do not indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that neither of the two evaluators mentioned above can be considered a "recognized authority" because they did not specifically describe how their conclusions were reached; it is not clear what comprised the "original documents" mentioned in their opinions.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of 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 not sustained that burden.

**ORDER:** The appeal is dismissed. The petition is denied.