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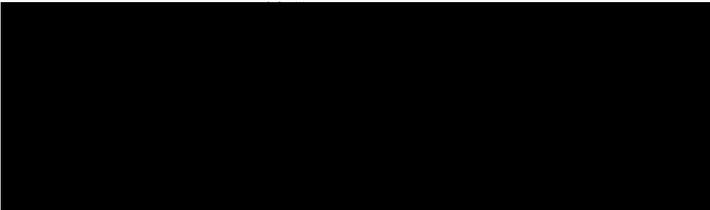


FILE: WAC 02 155 50545 Office: CALIFORNIA SERVICE CENTER Date: JUN 01 2004

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

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*

cc 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 corporation engaged in credit-card related services. In order to employ the beneficiary as an art director, 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 basis that the proffered position is not a specialty occupation. The director accepted the evidence of record as sufficient to establish that the petitioner was proffering an art director's position. However, relying in part on information about art directors in the Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, the director determined that the proffered position did not satisfy any of the specialty occupation criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

At one point the director's decision referred to the proffered position as that of a paralegal. However, in the context where this mistaken reference occurred, it is clear that the director was addressing the art director's position at issue here.

On appeal, counsel submits a Form I-290B annotated with the following comments about the reasons for the appeal:

The Director in denying the petition for H1B status erred as a matter of law and in fact, and acted arbitrarily in that the position of Art Director is clearly a specialty occupation because, according to the [DOL's] Dictionary of Occupational Titles [DOT], the position of Art Director is accorded an SVP of 8 (4 to 10 years of experience). Indeed, a Graphic Designer, who is supervised by an Art Director, is accorded an SVP of 7 (2 to 4 years of experience). Furthermore, in no way does the job description reflect the duties of a Paralegal as claimed in the denial.

A detailed brief will be submitted within 30 days.

Although the Form I-290B indicated that a brief would be filed within 30 days, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

In reaching its decision, the AAO considered the entire record of proceeding, including: (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 as annotated by counsel. Upon review and consideration of the entire record, including all the material submitted by counsel and by the petitioner, the AAO has determined that the director's decision to deny the petition was correct. The record does not present an evidentiary basis for classifying the proffered position as a specialty occupation in accordance with any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In a letter that accompanied the Form I-129, the petitioner's vice president stated, in part, that the beneficiary would "manage [the petitioner's] newly expanded advertising division under the Marketing Department," and

that the beneficiary would "be in charge of art direction and graphic design necessary for our frequent large print ad in the local print media in the Los Angeles and surrounding areas."

The vice president also provided this job description:

Formulate design concepts and presentation approaches in print ad campaign, and direct workers engaged in art work, layout design, and copy writing for visual communications media, such as magazines, books, newspapers, and packaging.

The pertinent part of the RFE solicited "a detailed description of the work to be performed, including specific job duties, the percentage of time to be spent on each duty, hours per week of work, types of employees supervised, and the minimum education, training, and experience necessary to do the job."

In response to the RFE, the petitioner's vice president submitted a letter which indicated that the beneficiary would work 40 hours per week on various duties that were not specifically identified. The letter stated that the beneficiary would be "an integral part of our advertising department" and would "provide art direction in formulating our print ads and supervise part time employees specifically hired to form our advertising department." The letter also stated that the beneficiary would be "ultimately responsible for coming up with the final copy to be sent to the newspaper to be printed" and that "her ultimate responsibility will be the final copy of the print ads."

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.

Counsel's references to SVP codes in the *DOT* have no persuasive effect, as SVP ratings do not indicate whether a particular occupation requires a baccalaureate or higher degree in a specific specialty related to a particular occupation.<sup>1</sup> Appendix C of the *DOT* explains the SVP codes as follows:

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years

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<sup>1</sup> Although the DOL has replaced the *DOT* with its *O\*Net* publication, an Internet version of the *DOT* can be accessed at <http://www.oalj.dol.gov/libdot.htm>.

- 7 Over 2 years up to and including 4 years
- 8 Over 4 years up to and including 10 years
- 9 Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

As is clear from the excerpt above, an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the director did not err in discounting the *DOT* information. Furthermore, the *DOT* provides no means for converting DOT ratings into baccalaureate or higher degrees in specific specialties.

The fact that the director mistakenly referred to the proffered position as that of a paralegal is of no consequence: it was obviously a clerical error, and it does not affect the validity of the director's decision to deny the petition on the basis of the evidence of record.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) is satisfied where the evidence establishes that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The evidence of record here does not reach this threshold.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. The director was correct in his determination that art director is not a position for which the 2002-2003 edition of the *Handbook* reports a requirement for a baccalaureate or higher degree in a specific specialty.

The petitioner's vice president presented no documentation or source for his "understanding that, generally, it is required that an art director has a bachelor's degree in art and [a] minimum of 3 years of experience providing art direction work."

As no evidence in the record refutes the *Handbook* information or its applicability to the proffered position, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) is not met.

Next, the petitioner has not reached the threshold of the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), as the evidence does not establish a specific-specialty degree requirement that is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As just discussed, the *Handbook* does not report that the proffered position requires a degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the

petitioner's industry. Finally, no evidentiary weight is accorded to the vice president's "understanding that, generally, it is required that an art director has a bachelor's degree in art and [a] minimum of 3 years of experience providing art direction work." 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).

The second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) provides that "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." The criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) is satisfied when specific duties are so specialized and complex as to require knowledge that is usually associated with the attainment of a baccalaureate or higher degree. The evidence of record about the proposed position is too sparse and generalized to qualify the proffered position under either of these criteria related to complexity, specialization, or uniqueness. For instance, the record provides no specific information about the type of employees who comprised the advertising department when the petition was filed, or about the specific tasks encompassed by the beneficiary's generally stated duties.

Finally, 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 – is not a factor in this proceeding, as the petitioner provided no evidence on this criterion.

Because the petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of any criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), 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.