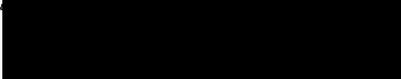




U.S. Citizenship
and Immigration
Services



FILE: WAC 03 150 53479 Office: CALIFORNIA SERVICE CENTER Date **OCT 25 2004**

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

identifying data deleted to
protect

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is a graphic design company. It seeks to employ the beneficiary as a design specialist, and 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 offered position was not a specialty occupation. On appeal, counsel submits a brief and additional information.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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 proceedings 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a design specialist. Evidence of the beneficiary’s duties was included with the I-129 petition and in response to the director’s request for evidence. According to this evidence the beneficiary would: using computer software, develop and execute designs of client logos that achieve overall product strategy and client creative direction; conceptualize, design, illustrate, and produce or direct the production of materials and brochures, corporate identities, and logos for clients; ensure that the designs fit together and work properly with the molds that will be used in production; develop specialized software as necessary; and supervise the work of designers and production staff. The petitioner further detailed the duties of the proffered position in its response to the director’s request for evidence. The petitioner requires a minimum of a bachelor’s degree in computer graphics, computer science with related experience, or fine arts with related experience for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel indicates that the offered position satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). In support of that assertion counsel submits a brief and additional evidence.

The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those performed by graphic designers. Upon review of the record, the petitioner has established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). The *Handbook*, 2004-05 edition, notes that a bachelor’s degree is required for most entry-level design positions, except for floral design and visual merchandising, and that acceptable degrees in fine arts are granted at 4-year colleges and universities. The proffered position is not a floral design or visual merchandising position, but a graphic designer position. Furthermore, the 2000-01 edition of the *Handbook* notes that academic training leading to a bachelor’s degree in art or design had virtually become a necessity for graphic design positions. The specific duties outlined by the petitioner with respect to both the design and the computer functions of the

graphic designer are much more specific than the generic information provided by the 2004 – 05 edition of the *Handbook*. The proffered position does, therefore, qualify as a specialty occupation.

The director did not comment on the beneficiary's qualifications to perform the duties of a specialty occupation, as the petition was denied on another ground. As such, this matter must be remanded to the director to determine whether the beneficiary qualifies to perform the duties of a specialty occupation. The director may request any additional evidence deemed necessary in rendering his decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion.