



U.S. Citizenship
and Immigration
Services

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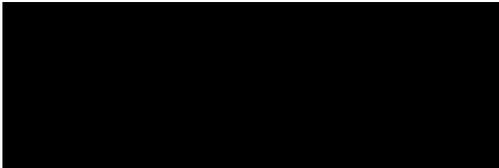


FILE: SRC 02 151 50443 Office: TEXAS SERVICE CENTER Date: SEP 02 2004

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

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

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invasion of personal privacy

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 an Internet and fine arts company that seeks to employ the beneficiary as a graphic artist. The petitioner 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief and other documentation.

The AAO will first address the director's conclusion that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be 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 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 a graphic artist, for which position the petitioner requires a baccalaureate degree or its equivalent in fine arts, as well as knowledge of computer graphics programs. The petitioner indicated that it wished to hire the beneficiary because he possessed a bachelor's degree in painting, work experience as a graphic artist, and computer-related training certificates.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's degree was in a fine arts field rather than in graphic design. An in-depth review of the Department of Labor's *Occupational Outlook Handbook (Handbook)* section on designers, however, reveals that fine arts would be an appropriate specific specialty with which to enter the position of graphic artist. The record contains copies of the beneficiary's Korean diploma and transcripts, as well as a credential evaluation report rendered by World Education Services, Inc. According to the documentation, the beneficiary holds the equivalent of a U.S. bachelor's degree in painting (fine arts) and has completed numerous courses in studies related to graphic and commercial art. Thus, it appears that the beneficiary would be qualified to perform the duties of the proffered position if it were determined to be a specialty occupation.

Unfortunately, the record contains very little specific detail about the proposed duties; hence, the AAO is unable to determine whether the proffered position is 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 petitioner is seeking the beneficiary's services as a graphic artist. 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 this evidence, the beneficiary would perform duties that entail creating logos, banners, graphics, brochures, signs, pamphlets, and specialty web sites for artists and painting watercolor, acrylic, and oil paintings to be sold online and at local art events. On appeal, counsel contends that the proffered position is a specialty occupation.

The fact that the job title pertains to a specialty occupation is insufficient; the petitioner must provide enough information to clearly demonstrate that the duties require bachelor's degree level knowledge of the specific specialty, which in this case would be fine arts. There is no specific information on the record regarding the petitioner's products, projects, services, or clients. The petitioner provided ample examples of the beneficiary's past artistic endeavors, but no examples, samples, or descriptions of the petitioner's potential need for artwork or the beneficiary's services as a graphic artist. A bare-bones allusion to logos, banners, brochures, and signs does little to convey the scope and level of the beneficiary's responsibility or the beneficiary's prospective daily routine. The petitioner mentioned that the beneficiary would supplement graphic arts duties with the production of fine art, but failed to describe in concrete terms either aspect of the position.

The vagueness and generality of the job description prevents an accurate assessment of the nature of the instant position. The petitioner has failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A), thus, the proffered position cannot be considered to be a specialty occupation. 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.