



U.S. Citizenship  
and Immigration  
Services

03

[REDACTED]

FILE: WAC 03 204 53145 Office: CALIFORNIA SERVICE CENTER Date:

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:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center 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 movie, television, and video producer that seeks to employ the beneficiary as a production manager. The petitioner, therefore, 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. On appeal, counsel states that the proffered position qualifies as a specialty occupation and submits additional evidence.

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 a production manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail coordinating commercial shoots; negotiating contracts; scouting and obtaining permits for locations; carrying out project development and supervising the work of up to 15 professionals; directing film/video directors, graphic designers, photographers, storyboard artists, illustrators, computer programmers, and proof readers; and working with computer generated graphic arts programs. The petitioner stated that a candidate must possess a bachelor's degree in cinema and be fluent in the Korean language.

The director determined that the proffered position was not a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the beneficiary's duties parallel those performed by a producer, an occupation that does not require a bachelor's degree. The director found the letter from Professor Caldwell unpersuasive in establishing that the industry required a bachelor's degree from a film/video program for the proffered position. Furthermore, the director found the evidence from the *Dictionary of Occupational Titles (DOT)* insufficient in establishing that the proffered position was a specialty occupation; its classification system was unrelated to membership in a professional or specialty occupation as defined by immigration law. Finally, the director stated that no evidence established an industry-wide baccalaureate degree requirement.

On appeal, counsel states that the proffered position qualifies as a specialty occupation, and that the director's denial of the petition was an error of law and fact.

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.

Counsel claims that the director's reliance on the 2002-2003 edition of the *Handbook* is misplaced: (1) it is not an authoritative publication because the expertise of the authors is unknown; (2) the section entitled "Important Note" states that the DOL cannot guarantee the accuracy of the information provided in the *Handbook*; and (3) the *Handbook* provides only "a general, composite description of jobs and cannot reflect work situations in specific establishments or localities."

Counsel's statements are not convincing. The *Handbook*, prepared and published by the DOL, is more useful to CIS in determining whether an occupation generally requires a degree in a specific field than either the *DOT* and the *Occupational Information Network (O\*Net)*. Both the *DOT* and *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook*, however, provides a more comprehensive description of the nature of a particular occupation and the

education, training, and experience normally required to enter into and advance within the occupation. It is used as a reliable reference source by CIS.

Counsel misinterprets the DOL's statement that "the *Handbook* provides a general, composite description of jobs and cannot reflect work situations in specific establishments or localities." This language relates to the following passage in which the DOL explained that the *Handbook*:

[D]escribes the job outlook over a projected 10-year period for occupations across the Nation; consequently, short-term labor market fluctuations and regional differences in job outlook generally are not discussed. Similarly, the *Handbook* provides a general, composite description of jobs and cannot be expected to reflect work situations in specific establishments or localities. The *Handbook*, therefore, is not intended and should not be used as a guide for determining wages, hours of work, the right of a particular union to represent workers, appropriate bargaining units, or formal job evaluation systems. Nor should earnings data in the *Handbook* be used to compute future loss of earnings in adjudication proceedings involving work injuries or accidental deaths.

In determining whether a position qualifies as a specialty occupation, the AAO does not consider the wages, hours of work, union rights, job evaluation systems, or earnings data of companies. Nor does it consider the work situations in specific establishments or localities. As previously mentioned, the AAO looks to the *Handbook* for a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation.

Finally, the AAO finds somewhat misleading counsel's claim that the DOL states that it cannot guarantee the accuracy of the information provided in the *Handbook*. The DOL has stated:

Many trade associations, professional societies, unions, industrial organizations, and government agencies provide career information that is valuable to counselors and jobseekers. For the convenience of *Handbook* users, some of these organizations and, in some cases, their Internet addresses are listed at the end of each occupational statement. Although these references were carefully compiled, the Bureau of Labor Statistics has neither authority nor facilities for investigating the organizations or the information or publications that may be sent in response to a request and cannot guarantee the accuracy of such information. The listing of an organization, therefore, does not constitute in any way an endorsement or recommendation by the Bureau either of the organization and its activities or of the information it may supply. Each organization has sole responsibility for whatever information it may issue.

The DOL's statement that it "cannot guarantee the accuracy of such information" relates to its inability to guarantee the accuracy of information or publications that organizations, such as trade associations, professional societies, unions, industrial organizations, and government agencies, provide directly to the

general public. The statement does not undermine the reliability of the *Handbook* as a reference tool as discussed above.

The AAO first considers 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 *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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. As previously discussed, the AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

A careful review of the *Handbook* discloses that some of the duties of the proffered position resemble those performed by producers. The *Handbook* describes producers as:

[O]verseeing the business and financial decisions of a motion picture, made-for-television feature, or stage production. They select scripts, approve the development of ideas for the production, arrange financing, and determine the size and cost of the endeavor. Producers hire or approve the selection of directors, principal cast members, and key production staff members. They also negotiate contracts with artistic and design personnel. . . . Producers in any medium coordinate the activities of writers, directors, managers, and agents to ensure that each project stays on schedule and within budget.

The petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because the *Handbook* states that no specific training is required for producers; many producers have different backgrounds.

Specifically, the *Handbook* mentions:

Producers often start in a theatrical management office, working for a press agent, managing director, or business manager. Some start in a performing arts union or service organization. Others work behind the scenes with successful directors, serve on boards of directors, or promote their own projects. No formal training exists for producers; however, a growing number of colleges and universities now offer degree programs in arts management and in managing nonprofits.

Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

The expert opinion letter from [REDACTED] Professor and Chair of the Department of Art with Seattle Pacific University, is relevant, though insufficient to establish that a specific baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the proffered position. In the opinion letter, [REDACTED] emphasizes that the National Association of Schools of Art and Design (NASAD) articulates the standards and guidelines for the education and training of professional film/video producers. But NASAD does not establish employment standards; it does not determine whether a specific baccalaureate degree is necessary for employment as a production manager.

In the letter, Professor Caldwell stated:

Baccalaureate degrees awarded in the field of cinema production are now considered the norm in this profession and are the base requirement for employment in this field.

The AAO does not agree that [REDACTED] opinion is substantiated by his 32 years of experience, education, and achievements or that the submitted expert opinion letter is more influential than the *Handbook's* information. [REDACTED] does not submit independent evidence that would support his opinion; 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). Consequently, the weight of the opinion letter is diminished.

Counsel's assertion that the director failed to consider that many occupations have transitioned into specialty occupations is not influential in establishing a specific baccalaureate degree requirement. The *Handbook* explicitly explains that a baccalaureate degree is not necessary to obtain a job as a producer; no evidence in the record contradicts this.

The evidentiary record does not establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The AAO has already discussed the shortcomings of [REDACTED] expert opinion letter. No other evidence has been submitted to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the petitioner fails to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

No evidence in the evidentiary record establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The submitted evidence such as the production schedule, the vendor and crew lists, and Professor Caldwell's opinion letter fall short of establishing the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge

required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Again, the *Handbook* depicts that a bachelor's degree is not necessary for the occupation of a producer.

As related in the discussion above, the petitioner has failed to establish that the proffered position is 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.