

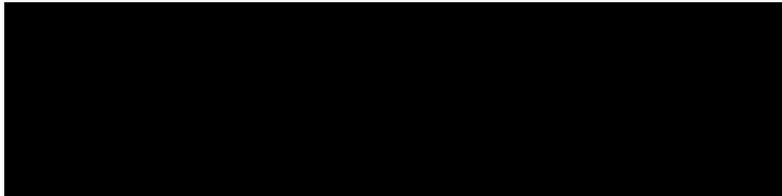
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U.S. Department of Homeland Security
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U.S. Citizenship
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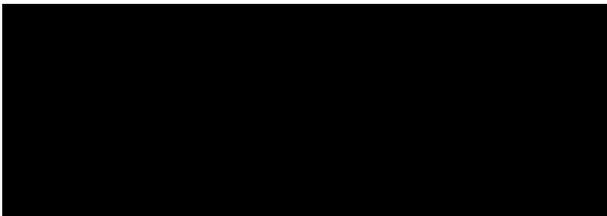
FILE: LIN 04 141 51080 Office: NEBRASKA SERVICE CENTER Date: DEC 01 2005

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

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 sustained. The petition will be approved.

The petitioner is a non-profit community media center that seeks to employ the beneficiary as an education facilitator and 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 proposed position is not a specialty occupation. On appeal, the petitioner submits a brief and additional evidence relating to the petitioner's qualifications requirements for the proposed position. The AAO determines that the proposed 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 proposed position.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's denial letter; and (3) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Although the petitioner lists education facilitator as the proposed position on the I-129, based on the petitioner's description of the job duties, the AAO finds that the proposed position is a dual position: self-

enrichment teacher and multi-media artist. Evidence of the beneficiary's duties is contained in Form I-129 with attachments. According to this evidence, the beneficiary's duties would include: developing production ideas, plans, securing and producing audio, visual, and audio-visual material for communication and learning, determining approach, level, and medium, directing production students in the creation of audio, visual, and audiovisual materials and graphics, conducting training sessions on selection, use, and design of audiovisual materials and graphics, developing manuals, texts, workbooks, or other materials for the above duties, and working at the Help Desk, troubleshooting, and scheduling production activities.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Based on the record, the AAO finds that the proposed position is that of a self-enrichment teacher/multi-media artist. The *Handbook* lists the following as duties performed by self-enrichment teachers:

teach courses that students take for pleasure or personal enrichment...Self-enrichment teachers may instruct children or adults in a wide variety of areas, such as cooking, dancing, creative writing, photography, or personal finance... teachers may demonstrate methods or techniques for their class and subsequently supervise students' progress.

For the position of multi-media artist, the *Handbook* indicates that multi-media artists create visual images, on film, on video, or with computers, or other electronic media.

The proposed position meets the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - the employer normally requires a degree or its equivalent for the proposed position. To support this criterion, the petitioner submits the following evidence: 1) a staff organization chart, 2) a list of all employees, their positions, and the degrees they have each earned, 3) a letter indicating that a self-enrichment teacher with a psychology degree employed by the petitioner has also recently completed the degree requirements for a bachelor's in digital design, 4) the resumes of three individuals employed by the petitioner as self-enrichment teachers, and 5) proof that the beneficiary earned a master's degree in electronic art from the University of Cincinnati. Although the petitioner did not submit all of this evidence to the director, it is now part of the record. Of the seven self-enrichment teachers at the media center, six of them have bachelor's or master's degrees in fine arts or related fields, including painting, video production, music, communication design, and mass communication. The job description contains in the petition describes duties that require at least a bachelor's degree in fine arts. This evidence establishes that the petitioner normally requires a bachelor's degree or higher degree in fine arts for the position of self-enrichment teacher/artist.

The record reflects that the beneficiary is a graduate of the M.F.A. program in the School of Art at the University of Cincinnati. She is thus qualified to perform the duties of the proffered position.

The burden of proving eligibility for the benefit sought rests entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained. The petition is approved.