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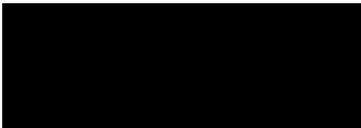
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FILE: WAC 03 236 51348 Office: CALIFORNIA SERVICE CENTER Date: FEB 18 2005

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

**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 newspaper agency that seeks to employ the beneficiary as a graphic designer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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.

The AAO will first address the director's conclusion that the position is not 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 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 designer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 28, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: developing the overall layouts and design of the newspaper and yellow pages; planning presentation of material, product, or service; determining size and arrangement of illustrative material and copy; selecting style and size of type; arranging layout based on available space, knowledge of layout principles, and esthetic design concepts; and formulating commercial concept, determining and drawing or painting graphic material and lettering to be used for title, background, advertising, commercial logo, and other visual layouts. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in graphic design for the proffered position.

The director found that the proffered position was not a specialty occupation because the job is primarily a manager or creative director position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of a graphic designer, and is not a manager or creative director position. Counsel states further that the proposed duties, which include performing all design projects, are consistent with the duties of a graphic designer. Counsel also states that, in accordance with information found in the *Handbook*, the proffered position is a specialty occupation.

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.

The AAO turns first to 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is that of a graphic designer, a position that requires a related baccalaureate degree. A review of the Desktop Publishers job description in the *Handbook*, 2004-2005 edition, describes the nature of the work, in part, as follows:

Depending on the nature of a particular project, desktop publishers may write and edit text, create graphics to accompany text, convert photographs and drawings into digital images and then manipulate those images, design page layouts, create proposals, develop presentations and advertising campaigns, typeset and do color separation, and translate electronic information onto

film or other traditional forms. Materials produced by desktop publishers include books, business cards, calendars, magazines, newsletters and newspapers . . .

Desktop publishers use a keyboard to enter and select formatting properties, such as the size and style of type, column width, and spacing, and store them in the computer, which then displays and arranges columns of type on a video display terminal or computer monitor. An entire newspaper, catalog, or book page, complete with artwork and graphics, can be created on the screen exactly as it will appear in print. . . .

A review of the proposed duties finds that they are similar to the duties of a desktop publisher. As such, the proffered position is primarily that of a desktop publisher. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a desktop publisher job.

Regarding parallel positions in the petitioner's industry, counsel submitted Internet job postings for graphic designers. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Although some of the positions are graphic designer-related positions for various newspapers, the printouts of the proposed duties for these advertised positions that were submitted by counsel are incomplete. It cannot be determined, therefore, that the duties are similar to the proposed duties of the proffered position. Furthermore, upon review of the partial descriptions of the proposed duties that appear on the printouts, it appears that they are more complex than the proposed duties of the proffered position. Other advertised positions are those of a user interaction designer and a graphic designer for the healthcare and manufacturing industries. The petitioner's industry, however, is not in healthcare or manufacturing. Thus, the advertisements have no relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to 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. On appeal, counsel states that the petitioner's classified advertisements for the proffered position demonstrate that it normally requires a baccalaureate degree. The record, however, does not contain any evidence of the petitioner's past hiring practices, such as degree certificates for its previous employees, and therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

The director also found that the beneficiary is not qualified to perform the duties of the proffered position because the evidence in the record does not establish that she holds the equivalent of a related baccalaureate degree. A review of the *Handbook* finds that most persons qualify for jobs as desktop publishers by taking classes or completing certificate programs at vocational schools, universities, and colleges or through the Internet. Although the programs range in length, the average certificate program takes approximately one year. In this case, the beneficiary holds a certificate in printing technology from a Korean institution. An evaluating professor from the University of Phoenix determined that the beneficiary's educational background is equivalent to 85 university credits and three years of college. As such, the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position. The petition may not be approved, however, because the proffered position is not 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.