

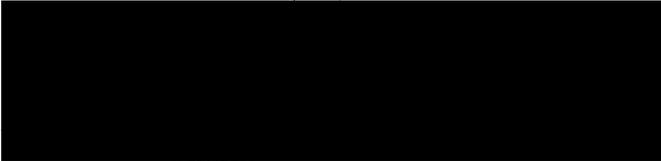
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U.S. Citizenship
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Services

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FILE: WAC 04 026 50997 Office: CALIFORNIA SERVICE CENTER Date: JUL 05 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:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Michael T. Kelly
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a film development and production company. It seeks to employ the beneficiary as an associate producer 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 ground that the record failed to establish that the proffered position qualifies as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, a letter from counsel, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is a fledgling film company, established in 2001, with plans to develop and produce 1-2 films per year. The petitioner proposes to hire the beneficiary as an associate producer, the duties of which were described as follows in a letter from the petitioner's president accompanying the petition:

[The beneficiary] will coordinate activities of personnel engaged in writing, directing, editing, and producing motion pictures. Specifically, she will supervise projects in different development stages, including scripts being pitched and reading scripts. She will be involved in re-writes, communicate attachment of actors and/or directors to different projects Additionally, she will assist in all aspects of the production of projects, support the director and producers, review dailies, and supervise and assist in the film editing process. Furthermore, she will be involved in meetings with directors, screenwriters, and other staff members to discuss production progress and results.

The petitioner asserted that the proffered position required a bachelor's degree in theatre arts, cinema, or a related field, and submitted four letters from individuals in or close to the film industry declaring that such a specialty degree was required for an associate producer position. A photocopy of the beneficiary's college degree was submitted indicating that she graduated from San Francisco State University on January 6, 2003 with a bachelor of arts in cinema.

In response to the RFE the petitioner's president explained in further detail why only an individual with a bachelor's degree in theater arts, cinema, or a related field would have the theoretical and practical knowledge to perform the duties of an associate producer:

[T]he ability to read and analyze scripts, communicate with actors, directors and production staff, and to analyze not only the profitability of a movie pitch but also the look and feel of the movie are fundamental [to the position] The skills and expertise obtained in the fulfillment of a Bachelor's degree in Theatre Arts, Cinema, or [a] related field such as screenwriting, workshop film production, film production lab, film theory, advanced production crafts, film editing, and production practice are directly related to the duties of this position. Even further, [the beneficiary's] education provides her a grounding in post-production [tasks] including editing that is not only key to this position but is also fundamental to the success of [the petitioner].

The petitioner submitted four more letters from individuals in or close to the film industry declaring that a bachelor's degree in cinema or a related specialty was required for the proffered position. Additional documentation submitted in response to the RFE included evidence of the petitioner's business operations – such as photocopied federal income tax returns, state business registration and corporate formation documents, a property lease, the company's organizational chart, photographs of the business premises, and various media publications relating to the company.

In his decision the director cited the letters in record from "members in the entertainment field" as evidence that most employers do prefer to hire a producer with a bachelor's degree in theatre arts, cinema, or a related field. He then referred to Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, however, which indicates that there are no specific educational requirements for producers, who come from a variety of backgrounds. Based on the duties of the

proffered position, the director determined that it was in the nature of an assistant promotion and office manager, which likewise did not require a bachelor's degree in a specific specialty. The director concluded that a baccalaureate degree in a specific specialty was not the normal, industry-wide minimum requirement for entry into the proffered position. The record did not establish that the petitioner normally required applicants for the position to have a baccalaureate or higher degree in a specific field, the director declared, or that the duties of the proffered position and its level of responsibility were beyond the scope of what is normally encountered in the occupational field. The director concluded that the proffered position did meet any of the criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director erred in finding that the proffered position is not a specialty occupation. Counsel refers to the numerous letters in the file from the entertainment industry and contends that they represent credible expert opinion that the associate producer position at issue in this petition requires a bachelor's degree in a related specialty.

The AAO has reviewed the entire record in this case, with particular focus on the petitioner's descriptions of the duties of the proffered position and the eight letters from individuals in or close to the film industry. Based on the evidence of record the AAO determines that the position is in the nature of an associate producer, as claimed by the petitioner. Of the eight supporting letters submitted by the petitioner, four are from film industry representatives – including three producers and one production coordinator – three are from university professors of film and related subjects, and one is from a television editor. The letters identify and discuss the myriad duties of an associate producer in the film industry and the proffered position in particular, indicate that the specialized nature of the work and the broad knowledge required by today's market demand that an associate producer have an educational background in the field, and state that a baccalaureate degree in cinema arts, theatre arts, or a related specialty is required to adequately perform the duties of the proffered position. The most detailed letter is from a professor in the Film and Digital Media Department of the University of California, Santa Cruz, with previous experience as a producer and cinematographer in the film industry, who compares the duties of the proffered position to the functions of an associate producer and concludes that the position requires a specialty degree in film or a related area, or an equivalent combination of academic training and professional experience. Based on the documentation in the record the AAO is persuaded that the duties of the proffered position are so specialized and complex that baccalaureate level knowledge of film or a related specialty is required to perform them. Accordingly, the AAO determines that the position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(C), the beneficiary must meet one of the following criteria to qualify to perform services in a specialty occupation:

- (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.

As previously noted, the beneficiary earned a bachelor of arts degree in cinema from San Francisco State University in January 2003. Based on that degree and the curriculum thereof documented in the record, the AAO determines that the beneficiary is qualified to perform the services of the specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(I).

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of that occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the AAO will sustain the appeal and approve the petition.

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