

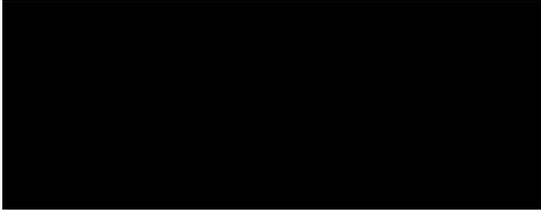
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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
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Services

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FILE: WAC 04 011 51475 Office: CALIFORNIA SERVICE CENTER Date: **NOV 02 2005**

IN RE: Petitioner  
Beneficial 

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 sustained.

The petitioner is a film marketing, distribution, and production business that seeks to employ the beneficiary as a manager of creative affairs and new project development. 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. On appeal, counsel submits a brief.

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 manager of creative affairs and new project development. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 10,

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: performing script analysis to identify projects; supervising freelance readers; tracking existing projects; performing liaison with writers, literary agents, and producers to find material for projects; finding production partners for material that is developed in-house; researching historical performance data to assist creation of marketing and distribution plans; and interacting with freelance vendors. The petitioner indicated that a qualified candidate for the job would possess a master's degree in motion picture production or an equivalent thereof.

The director found that the proffered position was not a specialty occupation because the job, which is similar to that of a marketing manager, is not so complex as to require a baccalaureate degree. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, 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 similar to a management analyst position. Counsel states further that a review of the *Handbook* finds that both management analysts and marketing managers require a related bachelor's degree. Counsel also states that the proffered position qualifies under all four prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore qualifies as a specialty occupation.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A review of the Advertising, Marketing, Promotions, Public Relations, and Sales Managers job descriptions in the *Handbook*, 2004-2005 edition, confirms the accuracy of the director's assessment to the effect that, the job duties parallel those responsibilities of a marketing manager. Information in the *Handbook* indicates that a wide range of educational backgrounds is suitable for entry into marketing manager jobs, but many employers prefer individuals with experience in related occupations plus a broad liberal arts background.

It is noted that not all marketing manager positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the proposed duties are of such complexity as to require a baccalaureate degree in a specialized and related area. The beneficiary in this case holds a Master of Fine Arts degree in Motion Picture Producing conferred by a U.S. institution. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the specialty occupation, within the meaning of the regulations.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved.