



U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 212 52905 Office: CALIFORNIA SERVICE CENTER Date: APR 05 2006

IN RE: Petitioner:
Beneficiary:



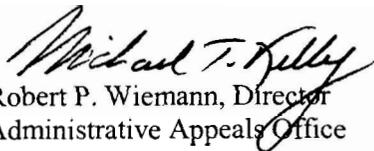
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

for 
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 web and magazine design production company that seeks to employ the beneficiary as an art director and to classify him 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 on the basis that the proposed 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 bachelor's 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: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (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 seeks the beneficiary's services as an art director/multimedia specialist. Evidence of the beneficiary's duties includes Form I-129 with attachments and the petitioner's response to the RFE. According to this evidence, initially, 50% of the beneficiary's duties would include: formulating design concepts and presentation of approaches; actually creating art work, including computer graphic work,

layout work, design and copy writing work; and using Japanese and English for visual communication media such as magazines, books, newspapers, and packaging. As the business of the petitioner expands, it anticipates that it will hire others to do the physical artwork and the beneficiary will then shift to supervising those workers. The petitioner states that the position requires someone with a background such as the beneficiary's: a bachelor's of arts degree with course work in art, computers, graphics, advanced ALC computer animation, multi-media art and computers, 3-D computer animation, advanced 3-D animation and project and seminar courses related to these areas.

The petitioner need only satisfy one of the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) to show that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has established that its art director/multimedia specialist position meets the fourth criterion outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is a specialty occupation.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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 bachelor's or higher degree. The evidentiary record establishes that the beneficiary's specific duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in art or a related field. As described by the petitioner, the beneficiary will formulate design concepts and presentation of approaches; create art work, including computer graphic work, layout work, design and copy writing work; and use Japanese and English for visual communication media such as magazines, books, newspapers, and packaging. The evidentiary record reveals that the beneficiary must understand esthetics and be able to communicate ideas in writing and visually. This knowledge is usually associated with the attainment of a bachelor's degree in graphic design or a related major.

Thus, the petitioner has established that the proposed position is a specialty occupation.

The AAO notes that the beneficiary is qualified to perform the duties of the proposed position: he holds a bachelor of arts in multimedia and American language & culture from Teikyo Marycrest International University located in Davenport, Iowa.

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.

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