

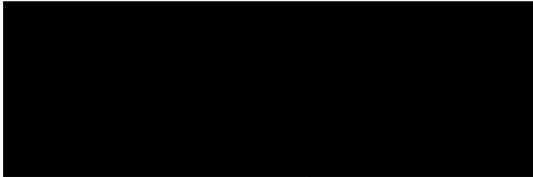


U.S. Citizenship
and Immigration
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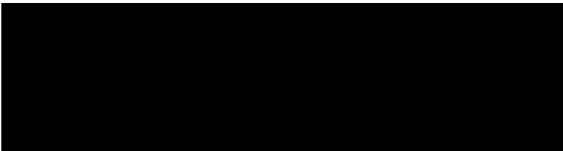


FILE: WAC 04 090 52273 Office: CALIFORNIA SERVICE CENTER Date: JAN 20 2006

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 sustained. The petition will be approved.

The petitioner is a commercial printer and seeks to employ the beneficiary as a graphic designer (advertising). The petitioner endeavors to classify the beneficiary 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 stating that the proffered position does not qualify as a specialty occupation, and that it cannot be determined that the petitioner would be the actual employer of the beneficiary due to a discrepancy in the record concerning the petitioner's employer identification number (EIN). On appeal, counsel submits additional information concerning the EIN record discrepancy, and stating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

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), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the 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) the Form I-290B with 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 (advertising). Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Create designs, concepts, and sample layouts based on knowledge of layout principles and esthetic design concepts;
- Determine size and arrangement of illustrative material and copy, select style and size of type;
- Use computer software to generate new images;
- Mark up, paste, and assemble final layouts to prepare layouts for the printer;
- Draw and print charts, graphs, illustrations, and other artwork using computers;
- Review final layouts and suggest improvements as needed;
- Confer with clients to discuss and determine layout designs;
- Develop graphics and layouts for product illustrations, company logos, and internet websites; and
- Prepare illustrations or rough sketches of material, discussing them with clients and/or supervisors making necessary changes.

The petitioner requires a minimum of a bachelor's degree in fine arts, a closely related field, or the equivalent for entry into the proffered position.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those performed by graphic designers. Upon review of the record, the petitioner has established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). The *Handbook*, 2004-05 edition, notes that a bachelor's degree is required for most entry-level design positions and that acceptable degrees in fine arts are granted at 4-year colleges and universities. The 2000-01 edition of the *Handbook* notes that academic training leading to a bachelor's degree in art or design had virtually become a necessity in the industry. The proffered position does, therefore, qualify as a specialty occupation.

The next issue to be determined is whether the beneficiary is qualified to perform the duties of a specialty occupation. The director did not determine this issue as the petition was denied on another ground. The record indicates that the beneficiary possesses a Bachelor of Arts degree in Fine Arts with concentrations in Advertising Arts and Graphic Design from the University of Santo Tomas in the Philippines. That degree was determined by a credentials evaluation service to be equivalent to a Bachelor of Arts degree in Advertising and Graphic Design awarded by a regionally accredited university in the United States. The beneficiary is, therefore, qualified to perform the duties of the offered specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The final issue to be considered concerns the director's finding that it could not be determined that the petitioner would be the actual employer of the beneficiary due to a discrepancy in the record concerning the petitioner's EIN. The petitioner states that it operated as a partnership when filing tax returns for years 2000 – 2002, and during that time frame used EIN- [REDACTED]. It then incorporated and was given a new EIN- [REDACTED] which was used when the Form I-129 was filed in the year 2004. Thus, the record establishes that there is no discrepancy concerning the petitioner's EIN, and the director's concerns in this regard have been overcome.

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 and the appeal shall accordingly be sustained.

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