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U.S. Citizenship  
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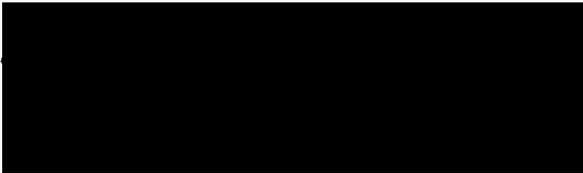
*DZ*

FILE: EAC 04 260 51957 Office: VERMONT SERVICE CENTER Date: JUN 05 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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 dismissed. The petition will be denied.

The petitioner is a provider of productions services. It seeks to employ the beneficiary as an executive producer and classify him 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 grounds that the record failed to establish that the proffered position qualifies as a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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) director's decision; and (3) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a production services provider that produces and directs advertising and editorial photo shoots. The petitioner also offers related production services including production management, casting, and location scouting, in addition to non-production related services such as studio coordinating, catering and craft services, and travel arrangements. The petitioner is a fledgling company that was apparently established shortly before the instant petition was filed. According to the petitioner, the company was incorporated in 2004, has a projected workforce of two employees, and projects its gross annual income at \$200,000. The petitioner proposes to employ the beneficiary as an executive producer for three years, at an annual salary of \$35,000. The duties of the position are listed as follows:

- Supervise all aspects of production projects for advertising shoots simultaneously including meetings, bidding, methodology, budget tracking, location scouting, filming, etc.
- Bid all productions to include: creative editorial through final color correction, conform, graphics and effects plus recording and mixing.
- Negotiate the award of jobs with agency producers.
- Perform actualization of all costs after completion of job.
- Schedule all editors with multiple overlapping jobs.
- Coordinate assistants, support staff and equipment with appropriate jobs.
- Supervise and coordinate entire production process for commercial shoots including casting, permits, catering services, location scouting, photography, etc.
- Maintain constant communication with clients, agency producers, directors and photographers on each job project concerning schedules, deadlines, overages reports and general progress.
- Maintain excellent business relations with and between producers, creatives, editors, talent, etc.
- On a daily basis work with senior client representatives, reporting on all progress of ongoing productions.

According to the petitioner, the proffered position requires at least a bachelor of arts degree or the equivalent in film, photography, or advertising. The beneficiary is qualified for the proffered position, the petitioner declares, based on his previous experience in production consulting and coordination services, and as a photographer, as well as his bachelor of fine arts degree, with a major in professional photographic illustration (advertising photography), from the Rochester Institute of Technology, awarded on August 15, 2003.

In her decision the director stated that the duties of the proffered position are consistent with those of a producer, as described under the occupational category of actors, producers, and directors in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The director quoted information in the *Handbook* indicating that baccalaureate level education in a specific specialty is not required for entry into such positions. Nor did the director find that the position involves a level of specialization or complexity that requires baccalaureate level education to perform. The director concluded that the proffered position does not qualify as specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director erred in analyzing the proffered position under the *Handbook's* occupational category of actors, producers, and directors. Those occupations are in the performing arts industry (theater, film, radio, television), counsel explains, whereas the petitioner specializes in

advertising and editorial photo shoots. Counsel contends that the proffered position falls within the occupational category of advertising and public relations services, as described in the DOL's *Career Guide to Industries* (a companion resource to the DOL *Handbook*) and quotes information in this resource stating that "[m]ost entry-level professional and managerial positions in advertising and public relations services require a bachelor's degree, preferably with broad liberal arts exposure." According to counsel, the duties of an executive producer in the advertising field are significantly different and more technical than those of executive producers in the field of performing arts. Counsel submits a series of internet job postings for advertising and public relations positions, all of which require a bachelor's degree. Based on the foregoing evidence, counsel asserts that the proffered position qualifies as a specialty occupation under all four criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO agrees with counsel that the petitioner's business falls generally within the industry category of advertising and public relations services. The business also involves some elements of the performing arts, however, which are reflected in the title as well as the duties (such as casting, location scouting, filming supervision, and communication with clients, directors, and photographers) of the proffered position. The AAO determines that the duties of the proffered position combine two occupational categories in the *Handbook* – a producer and an advertising manager. Producers are described in the *Handbook*, 2006-07 edition, as follows:

*Producers* are entrepreneurs, overseeing the business and financial decisions of a motion picture, made-for-television feature, or stage production. They select scripts, approve the development of ideas for the production, arrange financing, and determine the size and cost of the endeavor. Producers hire or approve the selection of directors, principal cast members, and key production staff members. They also negotiate contracts with artistic and design personnel in accordance with collective bargaining agreements and guarantee payment of salaries, rent, and other expenses . . . . Producers in any medium coordinate the activities of writers, directors, managers, and agents to ensure that each project stays on schedule and within budget.

Advertising managers are a subcategory of the *Handbook's* broad occupational category of advertising, marketing, promotions, public relations, and sales managers. As described in the *Handbook*, 2006-07 edition:

Advertising managers oversee advertising and promotion staffs, which are usually small, except in the largest firms. In a small firm, managers may serve as liaisons between the

firm and the advertising or promotion agency to which many advertising or promotional functions are contracted out. In larger firms, advertising managers oversee in-house account, creative, and media services departments . . . .

. . . .

[A]bout one-fourth of advertising and promotions managers worked [in 2004] in the professional, scientific, and technical services industries, and the information industries, including advertising and related services, and publishing industries . . . .

With respect to the educational requirements of the occupations, the *Handbook*, 2006-07 edition, states as follows:

There are no specific training requirements for producers. They come from many different backgrounds. Talent, experience, and business acumen are important determinants of success for producers. Actors, writers, film editors, and business managers commonly enter the field . . . . Producers often start in a theatrical management office, working for a press agent, managing director, or business manager. Some start in a performing arts union or service organization. Others work behind the scenes with successful directors, serve on boards of directors, or promote their own projects. No formal training exists for producers; however, a growing number of colleges and universities now offer degree programs in arts management and in managing nonprofits.

As for advertising managers, the *Handbook, id.*, states as follows:

A wide range of educational backgrounds is suitable for entry into advertising . . . . managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

The foregoing language is similar to that previously quoted from the DOL's *Career Guide to Industries*, 2004-05 edition, which states that most entry-level professional and managerial positions in advertising services require "a bachelor's degree, preferably with broad liberal arts exposure."

As clearly indicated in the *Handbook* (and the *Career Guide to Industries*), a baccalaureate or higher degree in a specific specialty is not the normal, industry-wide requirement for entry into a position as a producer or as an advertising manager. Employers give favorable consideration to a broad spectrum of degrees in hiring for advertising managers, and relevant work experience is perhaps the most important qualification for producers. Thus, the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into the position.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record contains ten internet job postings for producers – variously titled executive producer, technical producer, interactive producer, associate producer, senior producer, or simply producer – all of which state that a bachelor's degree and relevant work experience is required. None of the postings states that the bachelor's degree must be in a specific specialty. Specialized work experience, not a specialty degree,

appears to be the key qualification for the positions. Nor do the advertising companies appear to be similar to the petitioner in their line of business or scale of operations. Accordingly, the internet job postings do not establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not show that the duties of the proffered position are so specialized and complex that their performance requires baccalaureate level knowledge in a specific specialty. The record fails to establish that the duties of the position exceed the scope of those normally performed by a producer and/or an advertising manager, or that the duties of the position could not be performed by an individual with less than baccalaureate level knowledge in a specific specialty. Accordingly, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the proffered position does not qualify as a specialty occupation under any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

**ORDER:** The appeal is dismissed. The petition is denied.