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FILE: WAC 04 201 51677 Office: CALIFORNIA SERVICE CENTER Date: **JUL 14 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.

*Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a film production company, with one employee. It seeks to employ the beneficiary as a film editor 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 because he determined the position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's letter, and previously submitted and new documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary’s services as a film editor. Evidence of the beneficiary’s duties includes: the Form I-129; counsel’s July 6, 2004 letter in support of the petition; and his November 15, 2004 response to the director’s request for evidence. This evidence indicates that the duties of the proffered position would require the beneficiary to:

- Supervise and coordinate the editing and assembling of motion picture film, television or cable television video tape, and sound tracks;
- Study scripts and confer with producers and directors concerning layout or editing techniques to increase dramatic or entertainment value of the production;
- Evaluate and select scenes in terms of dramatic and entertainment value and story continuity;
- Trim film segments to specified lengths and reassemble segments in sequence that present the story with maximum effect, or edit video tape using editing equipment;
- Review edited and assembled film/videotape on screen or monitor to detect and correct errors; and
- Present finished product to producers and directors, making revisions as needed.

Counsel states that the beneficiary’s one and one-half years of college education and his 19 years of directly applicable experience are the equivalent of a baccalaureate degree in the field of film editing and qualify him to perform the duties of the proffered position.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular

occupations, reports the industry requires a degree; 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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In his denial, the director, relying on the *Handbook*, concluded that the duties of the proffered position were those of a producer, employment that does not impose a degree requirement on those seeking entry-level employment.<sup>1</sup> The AAO does not agree.

As asserted by counsel on appeal, the duties of the proffered position are most closely aligned to those of a film editor, employment discussed by the 2006-2007 edition of the *Handbook* under the occupational title of television, video, and motion picture camera operators and editors:

Film and video editors edit soundtracks, film and video for the motion picture, cable, and broadcast television industries . . . .

Making commercial-quality movies and video programs requires technical expertise and creativity. Producing successful images requires choosing and presenting interesting material . . . .<sup>2</sup>

With regard to the preparation required for employment as a film editor, the *Handbook* indicates the following:

Employers usually seek applicants with a good eye, imagination, and creativity . . . .  
Television, video, and motion picture camera operators and editors usually acquire their skills through on-the-job training or formal post secondary training at vocational schools, colleges, universities, or photographic institutes. Formal education may be required for some positions.

As the *Handbook* indicates no specific degree requirement for employment as a film editor, the AAO concludes that the performance of the proffered position’s duties does not require the beneficiary to hold a baccalaureate or higher degree in a related field. Accordingly, the petitioner has not established the proffered position as a specialty occupation under the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

On appeal, counsel notes the limited discussion of film editors provided by the *Handbook* and contends that other Department of Labor publications – the *Online Wage Library* and the *Dictionary of Occupational Titles (DOT)* – do report a degree requirement for the proffered position. He asserts that the JobZone rating of 4 assigned to the occupation by the *Online Wage Library* and the Specific Vocational Preparation (SVP) rating

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<sup>1</sup> *Occupational Outlook Handbook*, 2006-2007 Edition, at [www.bls.gov/oco/ocos093.htm](http://www.bls.gov/oco/ocos093.htm).

<sup>2</sup> *Ibid.*, at [www.bls.gov/oco/ocos091.htm](http://www.bls.gov/oco/ocos091.htm).

of 8 indicated by the *DOT* are proof that the occupation of film editor requires either a baccalaureate degree plus experience or up to ten years of vocational preparation. However, neither the *DOT*, nor the *Online Wage Library* is a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty, as required for classification as a specialty occupation. They provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. While the *DOT* assigns a SVP rating of 8 (requiring preparation of over 4 years up to and including 10 years) to the occupation of film editor, an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education and experience, and it does not specify the particular type of degree, if any, that a position would require. The *JobZone* rating of 4 given to the position by the *Online Wage Library* does not indicate that a bachelor's degree in a specific specialty is required. Accordingly, this additional evidence does not establish the proffered position as a specialty occupation under the requirements of the first criterion.

To establish a proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), a petitioner must prove either that a specific degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty. In the instant case, the petitioner has not sought to establish the proffered position as a specialty occupation under either of the criterion's prongs and has, therefore, submitted no evidence intended to satisfy their requirements. Accordingly, the proffered position may not be qualified as a specialty occupation under the second criterion.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine a petitioner's ability to meet the third criterion, CIS often reviews the position's employment history, including the names and dates of employment of those employees with degrees who previously held the position, as well as the petitioner's hiring practices with regard to similar positions. The petitioner has not, however, attempted to qualify the proffered position as a specialty occupation based on its normal hiring practices. Accordingly, the record does not demonstrate that the position qualifies as a specialty occupation under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a directly-related field. Therefore, to establish the proffered position as a specialty occupation, the petitioner must distinguish the beneficiary's duties from those typically performed by film editors, employment that the *Handbook* indicates does not normally impose a specific degree requirement on individuals seeking entry-level employment. The AAO does not, however, find the evidence of record to indicate, nor the petitioner to claim, that the beneficiary would be required to have greater knowledge or skills that those normally possessed by a film editor.

Instead, counsel contends that the submitted materials from the *Online Wage Library* and *DOT*, which report that the occupation of film editor requires a “bachelor’s degree plus experience or up to 10 years of SVP,” demonstrate that the position meets the specialized and complex threshold of the fourth criterion. Although the AAO notes that the education/experience ratings assigned by these publications indicate that employment as a film editor requires significant preparation, they do not report, as previously discussed, that employment as a film editor would require a job candidate to hold a degree in a directly-related field, as required for classification as a specialty occupation. Accordingly, these materials do not qualify the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the AAO shall not disturb the director’s denial of the petition.

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 not sustained that burden.

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