

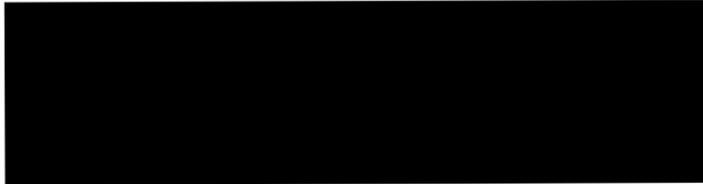
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

D2



FILE: LIN 05 236 51741 Office: NEBRASKA SERVICE CENTER

Date: FEB 06 2007

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.

Robert P. Wiemann, Chief  
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 construction company in the United States and seeks to employ the beneficiary as a computer graphics designer. 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 beneficiary does not qualify to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional information stating that the beneficiary does qualify to perform the duties of a specialty occupation.

The issue to be discussed in this proceeding is whether the beneficiary qualifies to perform the duties of 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)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and  
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent or the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The offered position is that of a graphic designer. The U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2006-07 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 as it meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted two evaluations of the beneficiary's education and past work experience. [REDACTED] Chair of the MFA Computer Art Department at the School of Visual Arts in New York, NY, submitted an evaluation of the beneficiary's education and work experience finding that the beneficiary's education and experience were equivalent to a Bachelor of Science degree with a dual major in graphic design and interior design. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), an

evaluation of an individual's education and work experience for degree equivalence purposes may only be made by an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit. As stated by [REDACTED] executive Director of Student Services at the School of Visual Arts, the School of Visual Arts does not grant college credit for professional experience. Thus, professor [REDACTED] evaluation is of little evidentiary value with regard to establishing the beneficiary's degree equivalence based upon her past work experience.

A second evaluation of the beneficiary's past education and work experience was submitted by [REDACTED] Associate Professor and Chair of Interactive Media at Duquesne University. Professor [REDACTED] found the beneficiary's past education and work experience to be equivalent to a bachelor's degree in Graphic Design from an accredited institution of higher education in the United States. The record also contains a statement from [REDACTED] Dean of the McAnulty College and Graduate School of Liberal Arts at Duquesne University which confirms that Duquesne University has a policy for awarding experiential learning credits for professional work experience, and that [REDACTED] has authority to grant college credit at the university based upon an individual's work experience.

The director found that the beneficiary was not qualified and refused to consider either evaluation because the two evaluations were inconsistent. The evaluation submitted by [REDACTED] stated that the beneficiary's education was equivalent to two years of academic studies leading to a Bachelor of Science Degree in Interior Design from an accredited institution of higher education in the United States. Professor [REDACTED] evaluation found the beneficiary's past education to be equivalent to one and one-half years of academic coursework from an accredited institution of higher learning in the United States, with more than eight years of qualifying work experience.

On appeal, the petitioner submitted additional evidence showing that in addition to the course work evaluated by [REDACTED] and [REDACTED] the beneficiary completed an additional two years of academic coursework in graphic design at the Avni Institute, an accredited institution of higher learning in Israel. That education was determined by a credentials evaluation service to be equivalent to two years of academic coursework in graphic design from an accredited institution of higher education in the United States. The evidence of record overcomes the basis of the director's denial, and the director's decision shall accordingly be withdrawn. The record establishes that the beneficiary has the equivalent of a bachelor's degree in graphic design from an accredited college or university in the United States, and that she is qualified to perform the duties of the proffered position.

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.