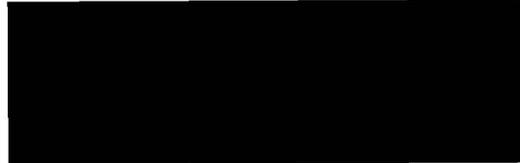




U.S. Citizenship  
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FILE: LIN 05 168 52461 Office: NEBRASKA SERVICE CENTER Date: **MAY 11 2007**

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 Director, Nebraska Service Center, 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 media and communications firm. It seeks to employ the beneficiary as a video producer. Accordingly, 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).

On October 27, 2005, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner asserts the denial is not supported by the evidence in the record, is inconsistent with prior decisions, and is an abuse of discretion. The issue in this matter is whether the petitioner has established that the proffered position is a specialty occupation.

The record contains: (1) the May 10, 2005 Form I-129 and supporting documentation; (2) the director's June 24, 2005 request for further evidence (RFE); (3) the petitioner's August 16, 2005 response to the director's RFE; (4) the director's October 27, 2005 denial decision, and (5) the Form I-290B with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before rendering its decision.

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:

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.

The petitioner seeks the beneficiary's services as a video producer. The petitioner initially provided the following description of duties for the proffered position:

- Discuss media production needs with clients to determine program content and structure; research and assist in writing program scripts; determine how best to communicate key messages to Chinese audiences.
- Coordinate and direct media projects; supervise production to include scheduling personnel and support activities; contract for professional services; direct location shooting, sound recording, editing, laboratory preparation and completion.
- Participate in the production of scripts, digital slide programs and motion media projects including original footage and animation of images needed to convey key messages.
- Preview films/videos with clients; edit films; coordinate production of artwork to include titles and animations in both Chinese and English.
- Travel to China and various locations in the United States to meet with clients, supervise shooting crews and edit productions; when necessary, assist clients and production crews in obtaining necessary clearances for video production from Chinese authorities.
- Maintain records reflecting operational activities, costs of services and inventory of productions; oversee proper billing of each client project.
- Perform other related duties incidental to the work described herein.

In an August 16, 2005 response to the director's RFE, counsel for the petitioner submitted excerpts from the Department of Labor's *O\*NET Online (O\*NET)* and the OES Online Wage Library that indicated a video producer position would have a JobZone rating of 4 and an education and training code of 4. The petitioner provided copies of four job advertisements for the positions of: (1) a media producer for an international media company that listed a bachelor's degree in a related field as required and a preference for an English or history major; (2) an associate producer for an unidentified organization that listed a bachelor's degree in journalism, English or communications as required; (3) a producer/director for an unidentified organization that indicated the successful applicant would have a bachelor's degree in television and film production or related field, or equivalent experience; and (4) a video program producer for a financial services firm seeking an individual with a bachelor's degree in mass communication or television production and a minimum of five years of experience.

The record also contains the petitioner's August 16, 2005 letter stating that it had employed ten video producers within the past 15 years and that all of them had at least a bachelor's degree, usually in television production or communications. The petitioner provided the resumes of two of its employees. The resumes indicated that one individual had a bachelor's degree in radio-television management and production and a second individual had a bachelor's degree in corporate communication. The petitioner also expanded upon the job description for the proffered position.

On October 27, 2005, the director denied the petition determining: that *DOT* and *O\*NET* references were insufficient to establish the occupation was within the professions; that the Department of Labor's *Occupational Outlook Handbook (Handbook)* did not identify specific training requirements for the occupation of a producer; that the petitioner had not established that the proffered position was parallel to the positions advertised in the job announcements submitted or that the advertisers were similar to the petitioner in size, number of employees or annual income; that the petitioner had not established that it had hired individuals to occupy the same position as the proffered position and that those individuals had degrees in the same specific specialty; and that the petitioner had not offered evidence to establish that the proposed duties are so specialized and complex that the knowledge required to perform the duties is associated with the attainment of a baccalaureate or higher degree.

On appeal, counsel for the petitioner repeats the detailed job description provided in response to the director's RFE. Counsel asserts that the director erred when relying solely on the *Handbook* to determine the educational level required for the proffered position. Counsel contends that the *Handbook* provides only inconclusive information regarding the proffered position contrary to the *O\*NET* and *OES Online Wage Library's* unambiguous statements regarding the particular occupation of producer. Counsel submits two letters, one from [REDACTED], President of [REDACTED] video production company of similar size and serving a similar business market as the petitioner and a second from [REDACTED] Creative Director of [REDACTED] video production company that hires full-time and freelance producers and is also similar in size and scope to the petitioner. The authors of both letters indicate that a producer should have at least a bachelor's degree in broadcasting, communications, journalism, or a related field. Counsel also provides a list of various organizations that have posted advertisements for various types of producing positions, and the type of various degrees or general degrees required for the positions. Counsel asserts the two letters and the job postings and the evidence previously submitted establish that a degree requirement is common to the industry in parallel positions among similar organizations. Counsel also submitted the resumes of three individuals the petitioner had hired in the past for positions similar to the proffered position to establish that the petitioner's hiring pattern required a bachelor's degree or the equivalent in communications, journalism, or a related field for the position of video producer.

Counsel repeated the petitioner's discussion of the duties of the position offered in response to the director's RFE and the petitioner's explanation regarding the complexity and specialization of the duties. Counsel noted that the director failed to comment on this information and submitted additional occupational information prepared by the Office of Personnel Management for government occupations in the audiovisual field to show the nature of the job offered to the beneficiary.

The AAO turns first to the *Handbook's* discussion of the occupation of "producer" under the heading actors, producers, and directors and its attendant educational requirements to determine whether a baccalaureate or

higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The *Handbook* reports:

*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 in any medium coordinate the activities of writers, directors, managers, and agents to ensure that each project stays on schedule and within budget.

The *Handbook* reports that there are no specific training requirements for producers and that they come from many different backgrounds. The AAO notes counsel's implied assertion that the *Handbook's* description of the duties of a "producer" does not correlate with the duties of the described position. The AAO agrees that the *Handbook's* information regarding the position of "producer" is general and does not include the details provided in the petitioner's description and discussion of the proffered position. Thus, in this matter, the *Handbook* does not assist in determining that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position. The AAO, however, does not find that the more particular descriptions found in the *O\*NET* and *OES Online Wage Library* for the position of video producer and the accompanying Job Zone classification establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position. As the director determined, neither of these sources are persuasive when determining whether the job described requires the attainment of a baccalaureate or higher degree in a specific specialty. Rather, these informational sources provide general information regarding the education, training, and experience required to perform the duties of a particular occupation. Moreover, the Job Zone classifications and SVP (Specific Vocational Preparation) ratings are meant to only generally indicate the total number years of vocational preparation necessary for a particular occupation. These sources do not describe how the years of preparation are divided among training, formal education, and experience and do not specify the particular type of degree, if any, that a position would require. Neither the record nor the informational sources reviewed establish that a baccalaureate or higher degree or its equivalent in a specific discipline is normally the minimum requirement for entry into the position of "video producer."

The petitioner has not established that the proffered position is a specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The AAO also finds that the petitioner has not established that the proposed duties qualify as a position that is identifiable with an industry-wide educational standard, or distinguishable, by its unique nature or complexity, from a similar but non-degree-requiring position. The job advertisements submitted do not uniformly identify a degree in a specific specialty as a requirement for entry into the position of a media or video producer. In addition, the job advertisements do not contain sufficient information to suggest that the organizations advertising are sufficiently similar to the petitioner or that the positions are parallel to the proffered position. The job postings listed by the petitioner on appeal and the various types of general and specific degrees identified as required for the position confirm that there is no degree requirement in a specific discipline for the occupation of "producer." The job advertisements are insufficient to establish an industry wide standard in parallel positions in similar organizations. The two letters submitted by counsel on appeal, likewise fail to establish a degree requirement is common to the industry in parallel positions among

similar organizations. Neither of the letters provides sufficient information to enable the AAO to conclude that the organizations' positions of video producer are positions that incorporate the same duties as that of the proffered position. Although the letters indicate a preference for a degree in broadcasting, communications, journalism, or a related field and experience for the position of "video producer" the letters fail to adequately support the opinions that such a degree is routinely required. The letters do not identify the specific job duties associated with the position of "video producer" nor does the record contain evidence of the educational background of the employees hired for the position of producer for other organizations. The authors of the letters do not provide documentary evidence substantiating the degrees, if any, of the video producers their companies have hired. Going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). The record is insufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the record contain evidence that distinguishes the proffered position as more complex or unique from other video producing positions within the petitioner's industry that do not require a degree in a specific discipline. The petitioner has not explained how the proffered position is sufficiently different than other like positions within the industry so that the proffered position must be identified as requiring a bachelor's degree in a specific discipline. The petitioner has not satisfied the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record also fails to substantiate that the petitioner has a history of recruiting and hiring degreed candidates in specific disciplines for the proffered position. To determine whether the petitioner has fulfilled the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. The petitioner claims that it has employed ten video producers within the past 15 years and that all of them had at least a bachelor's degree, usually in television production or communications. To support this claim the petitioner has submitted resumes of several of its employees. However, a resume is insufficient to establish the educational credentials of an employee; CIS requires documentary evidence substantiating the educational level of prior employees, such as diplomas, as well as documentary evidence that the petitioner actually employed the individuals. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in broadcasting, communication, video production, or a similar discipline and, therefore, establish the proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). In this matter, the petitioner provided an expanded description of the duties of the position in response to the director's RFE and an explanation of the complexity and specialized knowledge the successful applicant must have to perform the duties of the proffered position. The AAO notes that this information emphasizes the responsibility of understanding different cultures as well as the ability to communicate effectively across cultural boundaries; it is the nature of this particular video producing position that requires an advanced degree in television broadcasting to connect with people who have different backgrounds, philosophies, and value systems. The petitioner has provided sufficient evidence that the duties

of the proffered position contain elements different from that of a generalist position such as that of a video producer. The proffered position requires the performance of a combination of duties making this proffered position specialized. The evidence of record is sufficient to show that the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Upon review of the totality of the record, the record is sufficient to establish that the offered position requires a bachelor's degree, or its equivalent, in a specific discipline. Accordingly, it is concluded that the petitioner has demonstrated that the offered position is a specialty occupation within the meaning of the regulations. The AAO withdraws the director's determination to the contrary.

The record contains a credential's evaluation of the beneficiary's foreign education finding that the beneficiary's foreign education is equivalent to a bachelor's of arts degree in broadcasting with a concentration in television broadcasting. Thus, the beneficiary is qualified to perform the services of the specialty occupation.

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.