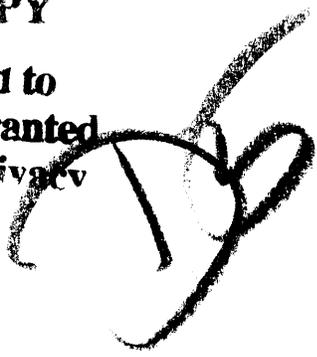


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**



FILE: WAC 99 045 50529 Office: CALIFORNIA SERVICE CENTER Date: APR 28 2004

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:

SELF-REPRESENTED

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 Administrative Appeals Office (AAO) dismissed the appeal. The petitioner subsequently submitted an appeal to the AAO on May 11, 1999. On November 20, 2001, the AAO denied the appeal. On December 28, 2001, the petitioner submitted a motion to reconsider/reopen the petition, and the AAO affirmed its prior decision. The petitioner now submits a second motion to reopen/reconsider. The motion will be granted. The previous decision by the director will be withdrawn. The petition will be approved.

The petitioner is a commercial photography studio that seeks to employ the beneficiary as a first assistant/studio manager. The petitioner, therefore, 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 because the proffered position is not a specialty occupation. The initial appeal and subsequent motion also affirmed the director's findings. On motion, the petitioner refers to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* 2002-2003 edition. The petitioner also submits more documentation.

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.

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 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) the petitioner's letter, dated November 20, 1998, in support of the petition; (3) the director's denial letter; (4) the

Form I-290B and supporting documentation dated May 11, 1999; (5) the AAO dismissal of the appeal dated November 20, 2001; (6) the first motion to reconsider/reopen received by CIS on December 20, 2001; (7) the AAO October 7, 2002 dismissal of the motion; and (8) the second motion to reconsider/reopen received by CIS on November 7, 2002. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a photographer/studio manager. In subsequent correspondence, the petitioner identified the photographer duties as being that of first assistant photographer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 20, 1998 letter in support of the petition; and the petitioner's letter dated May 7, 1999 submitted on appeal that contains more details with regard to the duties of the proffered position. According to the initial petition, the beneficiary would perform photography assignments and manage and maintain the photography studio, and its equipment. In its appeal, the petitioner stated that the position required an individual with computer, electric and construction skills as well as artistic and photographic skills. The petitioner added that the studio manager/first assistant photographer oversees the day-to-day business operations of the studios, and arranges and coordinates subcontractors (make-up artists, second assistants, and talent) in addition to handling the logistics of all location and studio photography. The petitioner stated that the position required expertise in the business of fine arts (management, marketing and negotiation skills).

The director found that the proffered position was not a specialty occupation and referred to the description of photographer in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 1994-1995 edition. This document stated that there is no one best way to enter the photography occupation and that many entry-level jobs require little formal preparation in photography. The director also stated that the petitioner had not clearly described the duties of a studio manager. The director further found that the petitioner had not established any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

The subsequent dismissal of the petitioner's appeal and the decision on its first motion to reconsider were also predicated on the *Handbook's* classification of photographers. In its decision on the first motion, the AAO stated that the *Handbook's* 2002-2003 edition found no requirement for a baccalaureate or higher degree in a specific specialty for entry into the position.

In its second motion to reconsider/reopen, the petitioner identifies the stages of the traditional apprenticeship in the photography industry as junior assistant, first assistant, studio manager, and photographer. The petitioner also provides a more detailed breakdown of the duties of a studio manager, as well as more information on the nature of its photography business. The petitioner further states that the 2002-2003 edition of the *Handbook* identifies commercial and industrial photographers as a distinct branch of the photography industry, and that the *Handbook* states that entry-level positions in photojournalism, industrial, or scientific photography generally require a college degree in journalism or photography.

Upon review of the record, the petitioner has established two of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO turns first 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; 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 often considered by CIS when determining these criteria include: whether the *Handbook* reports that 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. As correctly cited by the petitioner, the *Handbook* in its 2002-2003 edition states the following:

Employers usually seek applicants with a "good eye," imagination, and creativity, as well as a good technical understanding of photography. Entry-level positions in photojournalism, industrial, or scientific photography generally require a college degree in journalism or photography. Freelance and portrait photographers need technical proficiency, whether gained through a degree program, vocational training, or extensive work experience.

The petitioner has established that it is a commercial photography studio, as opposed to a portrait photography or free-lance photography concern. The duties as described by the petitioner fall within the *Handbook* subcategory of commercial and industrial photographers. Thus the *Handbook* establishes that the proffered position would require a baccalaureate degree in photography for entry into the position.

In addition, based on the petitioner's further explanation of the duties of both a studio manager and commercial photographer, the combined nature of these duties do appear to be specialized and complex enough to establish that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. It does not appear excessive that the petitioner would require a baccalaureate degree in a specific specialty for the proffered position.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation. In addition, the petitioner submitted sufficient evidentiary documentation to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall withdraw the director's April 14, 1999 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 sustained that burden.

ORDER: The director's decision is withdrawn. The petition is approved.