PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

U.S. Citizenship and Immigration Services

[redacted]

FILE: SRC 03 091 50945 Office: TEXAS SERVICE CENTER Date: MAY 04 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a full service production company that seeks to employ the beneficiary as a painter, illustrator, and cartoonist. 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. On appeal, counsel submits a brief.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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 director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a painter, illustrator, and cartoonist. Evidence of the beneficiary's duties includes: the Form I-129; the undated letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part, painting and drawing subject materials for commercials such as backgrounds and murals; and preparing sketches of commercials, animation, comics, and cartoons using watercolors, oils, acrylics, tempera, and other paint mediums. The petitioner stated that a candidate must possess a bachelor's degree, or its equivalent, in fine arts or a related field.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position is a specialty occupation. Counsel states that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), supports the petitioner's contention that a bachelor's degree is normally the minimum requirement for entry into the proffered position. According to counsel, the *Handbook* explains that most employers prefer candidates with a bachelor's degree, and that the *Occupational Information Network* (*O*NET)* also mentions that most painter, illustrator, and cartoonist positions require a four-year bachelor's degree. Counsel mentions this educational requirement is analogous to the requirements of a market research analyst position: the *O*NET* mentions that most market research analyst positions require a four year bachelor's degree. Furthermore, counsel states that based on educational requirements a market research analyst is considered a specialty occupation; therefore, painter, illustrator, and cartoonist positions should also be considered specialty occupations.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation as set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO finds that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into this particular position. According to the evidence, the petitioner is a T.V. production company that specializes in commercials, music, videos, and infomercials. In its undated letter submitted with the petition and in the March 3, 2003 letter, the petitioner claims that the beneficiary will prepare, for client approval, storyboards and sketches of commercials, animations comics, and cartoons using watercolors, oils, and acrylics; and will construct and decorate functional sets and props such as murals and scenic backgrounds for camera shoots. The AAO often consults the Department of Labor's *Handbook* to provide a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within an occupation. In describing the duties of the proffered position, the petitioner's job description fails to establish that the beneficiary's duties are parallel to those of an illustrator, cartoonist, and painter as described in the *Handbook*. Instead, the petitioner seems to describe the beneficiary's duties as entailing set design. The *Handbook* states that set designers create sets for movie, television, and theatre productions. Set designers study scripts, confer with directors and other designers, and conduct research to determine the historical period, fashion, and architectural styles appropriate for the production on which they work. They then produce sketches or scale models to guide in the construction of the actual sets. According to the *Handbook*, set designers typically hold a college degree in design. In light of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

Nevertheless, the petition may not be approved at this time. The director has not determined whether the beneficiary qualifies to perform services in the specialty occupation. Accordingly, the matter will be remanded to make such a determination and to review all relevant issues.

ORDER: The decision of the director is withdrawn. The matter is remanded to her for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.