



U.S. Citizenship
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FILE: WAC 03 123 51772 Office: CALIFORNIA SERVICE CENTER Date: SEP 26 2005

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

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, 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 appeal will be sustained. The petition will be approved.

The petitioner is a restaurant franchisor that seeks to employ the beneficiary as a graphic designer. 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, the petitioner states the proposed position qualifies as a specialty occupation.

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.

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 graphic designer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that involve on a monthly basis providing graphics for advertising/coupon flyer and changing flyers for corporate stores; creating posters for stores four times each year; creating new menus and menu boards for all stores; designing corporate clothing; providing advertising through magnets, stationary, pizza boxes, and paper bags, cups, plates, and napkins; and creating web pages for all stores. The petitioner requires a bachelor's degree in applied graphic design, graphic communication, or applied multimedia and design for the proposed position.

The director stated that the proposed position resembles a graphic designer as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reveals that this occupation is a specialty occupation. Nevertheless, the director found that the employer is not a likely employer of a graphic designer as small employers usually hire graphic designers on a contract or job basis. The director stated that no evidence showed that businesses similar to the petitioner require the full-time services of a graphic designer or that the petitioner has a unique and specific need for such full-time services. The director therefore concluded that there is no bona fide position.

On appeal, the petitioner discusses the difficulties involved in conducting a survey. The petitioner states that the director has no authority to determine an employer's needs, and asserts that it requires the full-time services of a graphics designer. According to the petitioner, it has 45 retail stores; 42 of which are managed by independent franchisees. The petitioner states that it plans to construct 10 stores in 2004, 10 stores in 2005, and will add additional stores for several years. The petitioner asserts that it requires more control over design practices, and discusses how the graphic designer's services will be used for marketing, and website, logo, and clothing design. The petitioner discusses the cost effectiveness of employing an in-house graphic designer, the case of *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989), and the *Occupational Information Network (O*Net)*. The petitioner asserts that the proposed position qualifies as a specialty occupation.

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation.

The petitioner has established the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. As described by the petitioner, the proposed position is that of a graphic designer; which is an occupation that the *Handbook* conveys requires a bachelor's degree in graphic design or a related field. Furthermore, on appeal the petitioner adequately explained the reasons for requiring the services of a full-time graphics designer.

The AAO notes that the record reflects that the beneficiary is qualified for the proposed position: he possesses a bachelor of arts degree in applied graphics technology with multimedia, and Global Education Group, Inc.

concluded that this degree is the equivalent to a bachelor's degree in graphic design awarded by a regionally accredited university in the United States.

As related in the discussion above, the petitioner has established that the proffered position is a 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.