

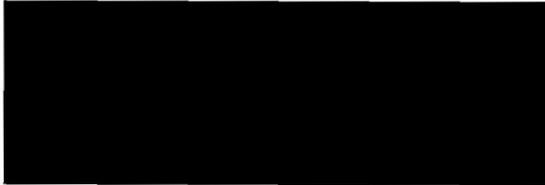
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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D-2

FILE: SRC 06 108 50654 Office: TEXAS SERVICE CENTER Date:

APR 24 2008

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 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 dismissed. The petition will be denied.

The petitioner is a production services provider for the entertainment industry. It seeks to extend its authorization to employ the beneficiary as a production 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 and the beneficiary is not qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's requests for evidence (RFE), dated April 24, 2006 and July 31, 2006, respectively; (3) counsel's responses to the director's requests, dated July 20, 2006 and August 16, 2006, respectively; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

Counsel's request that the denial of the petition for an extension, SRC 06 108 50654, and the "original" petition that was revoked, SRC 03 116 51000, be looked at together, is noted. Each petition filing, however, is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In this matter, the petition filing is that of SRC 06 108 50654, a request for an extension that was denied by the director on August 30, 2006. If the petitioner had wished to appeal the director's August 31, 2006 revocation of the petition filing SRC 03 116 51000, it should have filed a separate appeal with a new fee. In this proceeding, only the issues related to the petition filing SRC 06 108 50654 will be reviewed.

The first issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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) consistently 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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary's services as a production manager. Evidence of the beneficiary's duties includes: the petitioner's February 8, 2006 letter in support of the petition and counsel's July 20, 2006 response to the director's RFE. As stated by the petitioner, the proposed duties are as follows:

1. Pre-production and actual on-site production and coordination for "live" shows, including tours, concerts, and corporate events;

2. Pre-production and actual on-site production and coordination for television and radio special events, including client and technical production meetings and site advance trips;
3. Contact and coordination with vendors, including sound and lights, video, catering, transportation, and security, in order to negotiate fees and contracts for rentals and services;
4. Budget rentals and services for each event;
5. Supervise and control budgets for events and services;
6. Consult and approve vendors and personnel for rentals and services;
7. Supervise equipment set-up and installation for events, including approval of location, safety and security control, and meetings with venue administrators, technical personnel, fire marshals, police officials, security supervisors, and quality control; and
8. Supervise all working personnel, including union and non-union labor, sound technicians and engineers, lighting directors, video engineers and technicians, craft and catering personnel, special effects services technicians, and security personnel.

The director found that the proposed production manager duties do not require a bachelor's degree. The director also found that the petitioner had not demonstrated that the proffered position is similar to that of a producer, as described in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the supporting documentation that was submitted in response to the director's RFE demonstrates that the proffered production manager position qualifies as a specialty occupation. Counsel submits copies of the previously submitted documentation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not 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. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation. No evidence in the *Handbook*, 2006-07 edition, under the category of Actors, Producers, and Directors, indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for producer jobs. Producers come from many different backgrounds, and talent, experience, and business acumen are important determinants for their success. In addition, upon review of the record in its entirety, the proffered position appears to be more similar to that of a production coordinator, not a producer, as described in the *Handbook*. The record, however, contains no evidence that either position - a producer or a production coordinator - requires a baccalaureate or higher degree in a specific specialty, or its equivalent. Of further note, the petitioner submits no evidence, such as federal income tax returns and quarterly wage reports, in support of its claims on the petition that, as a production services provider for the entertainment industry, it has three employees and a gross annual income of \$1 million. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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 Dec. 190 (Reg. Comm. 1972)). Accordingly, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(I).

In a July 20, 2006 response to the director's RFE, counsel stated that the proffered position most closely resembles that of a producer in the *O*Net*, which is included under their Job Zone 4 requiring "considerable preparation" and has an SVP rating of 8. Counsel's interpretation of the *O*Net* is not persuasive that the proffered position is a specialty occupation. The *O*Net* does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. The *O*Net* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as regarding the education, training, and experience required to perform the duties of that occupation. The SVP rating does not describe how those years are to be divided among training, formal education, and experience, nor specify the particular type of degree, if any, that a position would require. In particular, the AAO notes that the *O*Net* Job Zone Four designation does not specify a degree in a related specialty as a characteristic of occupations encompassed by this category. The *O*Net* OnLine Help site on the Internet also states that an SVP rating indicates years of specific vocational training that may be attained in a variety of ways other than formal education.

Accordingly, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(I).

Regarding parallel positions in the petitioner's industry, counsel submits Internet job postings for two production manager positions and a production assistant position. The listings provided either fail to offer meaningful descriptions of the positions advertised or rely on duties unlike the duties listed by the petitioner. The petitioner has not demonstrated that any of the businesses, which include a public television business and two cable television businesses, are similar to its business. Moreover, two of the job listings stipulate only a preference for a college/bachelor's degree, not a requirement. In addition, these postings do not stipulate a degree in a specific specialty. Neither do these listings indicate that the businesses publishing the advertisements are similar to the petitioner in size, number of employees, or level of revenue.

The record also contains letters from representatives of six similar businesses who all assert that their production managers usually have a bachelor's degree in event management/production or a related field. They, however, do not provide any evidence in support of their assertions. Nor do they rely on industry surveys, data or other documentation to reach the conclusion that the proffered position requires a bachelor's degree in a field related to event management/production. Going on 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 Dec. 190 (Reg. Comm. 1972)). The *Handbook* is a compilation of results of nationwide industry questionnaires, surveys and personal interviews by the DOL, and indicates that there is no specific degree requirement for entry into the field as a producer/production coordinator. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Further, the fact the text of all six letters is almost identical makes questionable the level of consideration that the authors applied.

The record also contains an opinion from a person in the management industry, who asserts that positions such as the proffered position require a bachelor's degree in business administration, management, or a related field. The record does not indicate that the writer has adequate knowledge of this matter. The opinion does not include a discussion of the proposed duties and/or the actual work that the beneficiary would perform within the context of this particular petitioner's business. The writer does not demonstrate knowledge of the petitioner's particular business operations. He does not relate any personal observations of those operations or of the work that the beneficiary would perform. His opinion does not relate his conclusion to specific, concrete aspects of this petitioner's business operation to demonstrate a sound factual basis for his conclusion about the educational requirements for the particular position at issue. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As the opinion of the writer is not based on a factual foundation, the AAO does not find it probative in this matter.

The record does not include sufficient evidence from firms, individuals, or professional associations regarding an industry standard. In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment as a production manager. Moreover, the evidence of record about the particular position that is the subject of this petition does not establish how aspects of the position, alone or in combination, make it so unique or complex that it can be performed only by a person with a degree in a specific specialty. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As this issue is not discussed on appeal or in response to the RFE, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

In the July 20, 2006 response to the RFE, counsel states that the proposed duties have been evaluated in an expert opinion. The AAO here incorporates its discussion regarding that expert opinion and its lack of a discussion of the actual work that the beneficiary would perform within the context of this particular petitioner's business. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree in a specific specialty. Further, as indicated earlier in this decision, the petitioner's unsupported claims regarding the basic information of its business do not establish a requirement for the level of knowledge requisite for this criterion. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is 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 full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and 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, an 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.

The record contains the following documentation pertaining to the beneficiary's qualifications:

- An evaluation of the beneficiary's qualifying experience and training, dated February 7, 2003, from [REDACTED], concluding that, on the basis of 16 years of work experience and professional training in production management, the beneficiary has attained the equivalent of a Bachelor of Arts degree in Production Management from an accredited U.S. institution of higher education;
- An expert opinion evaluation dated July 20, 2006, from [REDACTED] concluding that the beneficiary's 18 years of work experience in management is equivalent to a bachelor's degree in business administration with a concentration in management;
- An "expert letter" dated July 20, 2006, from [REDACTED], concluding that, on the basis of 18 years of progressively responsible employment experience in management and related areas, the beneficiary has attained the equivalent of a Bachelor of Business Administration degree with a concentration in Management from an accredited U.S. institution of higher education;
- A letter, dated September 25, 2002, from the Director of International Transportation of Ringling Brothers & Barnum & Bailey International, Inc., and schedule, stating that the beneficiary was contracted as production coordinator for three consecutive South American tours of Disney on Ice between 1995 and 1998;
- A letter, dated September 17, 2002, and translation, from the director of LOWE GINKGO, stating that the beneficiary was contracted to do a production for the company OCA in Montevideo, Uruguay, in November 2001;
- A letter, dated September 24, 2002, and translation, from a representative of the Uruguayan business, *Complejo Riviera*, stating that the beneficiary was contracted to do the general production of various shows between 1995 and 2001;
- A letter, dated September 2, 2002, and translation, from the general manager of the Honduran business, *CRC Producciones*, certifying that the beneficiary worked as the production manager of the events by two artists on July 19, 2002 and August 16, 2002, respectively;
- A letter, dated September 23, 2002, and translation, from a representative of the Argentinean business, Booking Management, certifying that the beneficiary was contracted to produce various shows between 1996 and 1999;
- A letter, dated September 27, 2002, and translation, from a representative of the Argentinean business, POPART, certifying that the beneficiary was contracted as the local production manager for various tours by an artist in April 1998;

- A letter, dated September 4, 2002, and translation, from the president of the Brazilian business, *Opiniaio*, certifying that the beneficiary was contracted for production of various shows between 1996 and 1999;
- A letter, dated September 12, 2002, and translation, from the director of the Uruguayan business, *94.7 FM Concierto*, certifying that the beneficiary was contracted for the general production of various shows between 1989 and 1998;
- A letter, dated September 24, 2002, and translation, from the general manager of the Uruguayan business, *Punta Carretas Shopping*, certifying that the beneficiary was contracted for the general production for two shows in January and October 1995, respectively;
- A letter, dated September 2, 2002, and translation, from the director of the Uruguayan business, *SME*, certifying that the beneficiary was contracted for the general production of various shows between 1994 and 1996;
- A letter, dated September 3, 2002, and translation, from the promotions manager of the Uruguayan newspaper, *El Pais*, certifying that the beneficiary was contracted for the general production of an awards show in 2000; and
- A letter, dated October 14, 2002, from a representative of the business *Depositos Generales de Zona Franca S.A.*, a.k.a. *C.H.G. producciones internacionales s.a.*, certifying that the beneficiary worked in its production staff within the years of 1988 and 1995.

The petitioner has not provided evidence that the beneficiary meets any of the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1), (2), or (3). Thus the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for H-1B nonimmigrant visa based on:

- (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 of 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.

In this matter, the AAO must consider whether the beneficiary's work experience is sufficient to establish that he is qualified to perform the duties of the specialty occupation. In this matter it is not. When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities¹ in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains three evaluations and several employment letters, listed above, of the beneficiary's related work experience. As discussed above, the evaluators concluded that the beneficiary holds the U.S. equivalent of a management-related bachelor's degree, based upon his 16 to 18 years of management-related work experience and training. They, however, have not presented a sufficient factual basis to support their conclusions regarding this equivalency. The employment letters, which provide only vague descriptions of the beneficiary's duties, also do not account for the 16 to 18 years of relevant employment the evaluators discussed in their evaluations. It appears therefore that the evaluators relied largely upon the beneficiary's own resume in making their conclusions. None of the employment letters provides the requisite information regarding the beneficiary's daily duties and the progressively responsible experience gained while working at his place of employment. Neither do the letters describe the beneficiary's peers, supervisors, or subordinates'

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinion, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(i)(C)(ii).

credentials. Further, the record contains no evidence to indicate that the beneficiary's expertise has been recognized in one of the ways discussed above. Thus, the record is insufficient to establish that the beneficiary's training and/or work experience includes the theoretical and practical application of specialized knowledge required by a specialty occupation; that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or degree equivalent in a specialty occupation; or that the beneficiary's "expertise" in a specialty occupation has been recognized. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The petitioner has not submitted argument or documentation on appeal sufficient to overcome the director's decision on this issue. The petitioner has not established that the beneficiary has the requisite qualifications to perform the duties of a specialty occupation. For this additional reason, the petition will not be approved.

Accordingly, the AAO shall not disturb the director's 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 not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.