

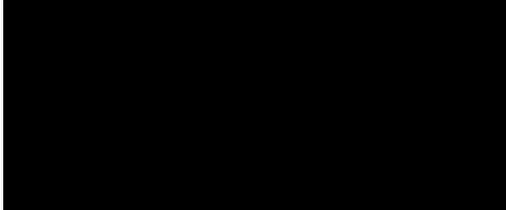


U.S. Citizenship
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FILE: WAC 04 011 50069 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2005**

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, 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 dismissed. The petition will be denied.

The petitioner provides production services and seeks to employ the beneficiary as a video editor. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant 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 the Form I-290B.

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) counsel'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 video editor. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail being responsible for both on-line and off-line editing for corporate campaigns and promotional and fundraising videos and programming for television spots and commercials as well as for major motion pictures; reviewing and selecting materials collected by the company's team of video photographers for use in the corporate and foundation videos as well as the electronic press release kits; using advanced editing software, recorders, sound mixers and patch bays, compiling and editing the selected materials and merging them to produce a finished product consistent with the goals and objectives outlined by the client; over the course of the editing project, conducting meetings and interacting with clients on a regular basis in order to make changes and revisions based on the client's comments and recommendations.

The petitioner indicated that the proffered position was highly technical and requires the minimum of a bachelor's degree in communications or a related degree.

The director requested additional evidence about the proffered position. Counsel for the petitioner responded and indicated that the percentage breakdown for various duties included:

- Compile and edit selected images and materials using recorders, sound mixer and patch bays (40% of time);
- Review and selection of material collected by video photographers for use in videos and promotional pieces (25%);
- Coordinate the preparation of video presentations and projects involving corporate campaigns, promotional and fundraising videos and annual video reports (20%);
- Meet with clients to discuss video format, recommendations and changes in video presentation (15%).

Counsel stated that the proffered position requires a college degree to ensure adequate analytical, organizational, and technical skills for the preparation and presentation of video projects and proposals. Counsel stated that a familiarity with editing software and equipment is essential as these are used for video editing and that this type of knowledge is acquired while obtaining a bachelor's degree or its equivalent in a discipline such as fine arts, communications or a related area.

The director determined that the proffered position was not a specialty occupation. The director found that the duties of the position as described by the petitioner, reflect those found under the heading Television, Video, and Motion Picture Camera Operators and Editors in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The director noted that the *Handbook* indicated the following about the training and other qualifications as follows:

Employers usually seek applicants with a "good eye," imagination, and creativity, as well as a good technical understanding of how the camera operates. Television, video, and motion picture camera operators and editors usually acquire their skills through on-the-job training or formal postsecondary training at vocational schools, colleges, universities, or photographic institutes. Formal education may be required for some positions.

The director determined that a video editor is an occupation that does not require a baccalaureate level of education in a specific specialty as a normal, industry wide minimum for entry into the occupation. The director stated that the evidence submitted is insufficient to establish that the position being offered requires the attainment of a baccalaureate or higher degree or its equivalent and is normally the minimum requirement for entry into the particular position; the degree requirement is common to the industry in parallel positions among similar organizations; or that the position is so complex or unique that it can be performed only by an individual with a degree; or that the employer normally requires a degree or its equivalent for the position; or that 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. Furthermore, the director determined that the proposed duties and stated level of responsibility do not indicate complexity or authority which is beyond that normally encountered in the field.

On appeal, counsel asserts that the current record and additional evidence submitted on appeal demonstrate clearly that the proffered position is a specialty occupation. Counsel asserts that the proffered position's duties are complex and entail knowledge in communications, marketing and advanced technology. Counsel contends that the *Handbook* should be assigned less weight because it combines various jobs in one article and fails to distinguish the training and background of the individual occupations. Counsel refers to the Department of Labor's *Dictionary of Occupational Titles (DOT)* and states that the *DOT* confirms that the typical training and education required for a video editor and camera/video operator are not similar. Counsel notes that a film/video editor has a Specific Vocational Preparation (SVP) level of 8 while a camera and video operator only triggers an SVP level of 7. Counsel asserts, in part, that the *DOT's* SVP rating was not considered, even though submitted into the record.

The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the director did not err in discounting the *DOT* information.

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 considers 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the

position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely refers to the *Handbook* for the duties of particular occupations and the education, training, and experience normally required to enter into and advance within the occupations.

The *Handbook* discloses that the beneficiary's duties are encompassed within the occupational classification entitled "television, video, and motion picture camera operators and editors." The beneficiary will "compile and edit selected images and materials using recorders, sound mixer and patch bays (40% of time)." According to the *Handbook*, film and video editors edit soundtracks, film, and video for the motion picture, cable, and broadcast television industries. A review of the remaining duties of the proffered position indicates that they are similarly included within the occupational classification.

As noted above in the *Handbook*, employers do not require a baccalaureate degree for this occupational classification. The *Handbook* indicates editors usually acquire their skills through on-the-job training or formal postsecondary training at vocational schools, colleges, universities, or photographic institutes, though formal education may be required for some positions.

Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the video editor position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on several internet job postings from various types of employers including a manufacturer, broadcasting station and a utility provider.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. A deficiency in the postings is that the companies are obviously dissimilar to the petitioner. For example, Garmin is a manufacturer of GPS and navigation products; Helen Akullian Associates Inc. is a medical communications company. Moreover, the petitioner has not established that the advertising companies are similar to the petitioner in size and income. Some of the advertised job requirements are patently dissimilar to the proffered position. For instance, Helen Akullian Associates Inc. requires the applicant to have a BA in English or Journalism and over three years of experiences in copyediting/proofreading; the posting for a videographer – editor states that work experience can substitute for education. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the proffered position is performed by video editors, positions that do not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position. Counsel asserted that the petitioner has previously required a bachelor's degree for the position of video editor. In support of his assertion counsel submitted a resume of an editor. The evidence submitted is insufficient to establish that the

petitioner normally requires a specific degree or its equivalent for the position. The petitioner did not submit proof of employment such as an employment contract or payroll documentation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties parallel those in the *Handbook* for a video editor, an occupation that does not require a specific baccalaureate degree. The petitioner has not submitted evidence that the duties of the proffered position are more complex than what is the normal industry wide minimum requirement for entry into the occupation. The evidence of record is insufficient to show that the job offered could not be performed by an experienced individual whose educational training falls short of a baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

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.