U.S. Department of Homeland Security
20 Massachusetts Avenue, NW, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

D2

[redacted]

FILE: EAC 04 086 52877 Office: VERMONT SERVICE CENTER Date: AUG 0 3 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 company that conserves and restores art objects that seeks to employ the beneficiary as a painting restorer. The petitioner 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 painting restorer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's January 23, 2004 letter in support of the petition; 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: restoring and repairing damaged or faded paintings; analyzing the damaged items and determining the best way to resolve the problems; identifying the artist, period or era of the art, age of the painting, and the style, pigments and origin of the painting; preparing and conducting tests, including physical, chemical, structural, pigment stability, oil content of the painting, and canvas tests to determine the type of solvents and cleaners to be used; repairing tears, holes, missing or deteriorated parts and discolored and stained sections of the canvas; painting in the missing parts of the painting, reproducing the coloration, strokes, texture, layers and shadows of the original painting; and meeting with clients. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in art restoration.

The director found that the proffered position was not a specialty occupation.

On appeal, counsel asserts that previously submitted evidence from various professional associations established that a degree is required for entry into the occupation. Counsel states that the director did not address any of this evidence in her decision. Counsel also states that the director stated that the Department of Labor's *Dictionary of Occupational Titles (DOT)* assigns the proffered position an SVP rating of 7, which is in error. Counsel states that the actual SVP assigned to the position by the *DOT* is 8, which counsel asserts indicates that a degree is required for the position.

Upon review of the record, the petitioner has established one 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 Department of Labor's *Occupational Outlook Handbook (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*, 764 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 *Handbook* does not specifically discuss the training required for art restorers and conservators, although it does state, in the entry for artists and related workers, that restoration work is usually

"reserved for experts in the field," and that the training requirements of the broad field vary by specialty and that it is difficult to become skilled enough to make a living without some training.

Counsel is correct in stating that the director apparently used the wrong entry from the *DOT* in discussing the proffered position. It is not clear why the director referenced the *DOT* at all, however. The *DOT's* SVP rating 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. 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, nor specify the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, the petitioner submitted information from various associations and organizations regarding the qualifications required for entry into the field. The Smithsonian Center for Materials Research and Education states, "Most restorers today have completed a rigorous course of study through an accredited post-graduate program combined with several years of internships. *However, there are still many top-quality restorers who are apprentice-trained.*" [Emphasis added]. The American Institute for Conservation of Historic and Artistic Works states, "A conservator may be trained at a conservation graduate training program *or by lengthy apprenticeship with experienced senior colleagues.*" [Emphasis added]. While counsel states that this evidence establishes that a degree is required for entry into the field, it actually establishes that there are methods of becoming a restorer or conservator that do not involve earning a bachelor's degree in a specific specialty.

The record does not include any documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*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. In response to the director's request for evidence, counsel stated that three of the petitioner's six staff were restorers and/or conservators, and that all three had at least a bachelor's degree in art, art history or art restoration and conservation. The record, however, does not contain any evidence to support this statement. 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).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(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. As described in the response to the director's request for evidence, the duties of the proffered position do appear to be so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

The beneficiary has bachelor's and master's degrees in fine arts with a specialty in conservation and restoration from a foreign university, which were determined to be equivalent to bachelor's and master's degrees in the same specialty from a United States university. The beneficiary is qualified to perform the duties of an art restorer.

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. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.