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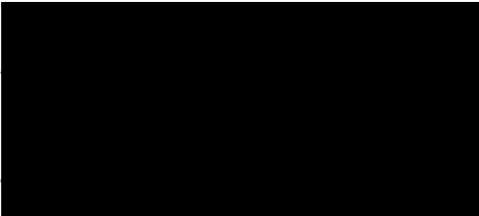
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FILE: WAC 03 176 50059 Office: CALIFORNIA SERVICE CENTER Date: FEB 07 2005

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:



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

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 is a software development company seeks to employ the beneficiary as a technical animator. 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 and previously submitted evidence.

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 technical animator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail designing, creating, and implementing high quality animations into computer games; manipulating program configuration files and script files; writing special tools such as scripts and batch files to increase the effectiveness of animations; interfacing with programmers to assess needs, code structure, and limitations; performing research and development into alternate computer animation methods; animating designs using current in-game models to the design specifications utilizing 3D software packages such as 3D Studio Max and Maya; rigging and binding skeletons to character meshes; and running animations through the technology pipeline and into the game, using appropriate programming tools. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree or its equivalent in computer science or a related field.

The director determined that the proffered position was not a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). According to the director, the duties of the proffered position are encompassed within the classification of artists and related workers as described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director stated that the *Handbook* indicates that a bachelor's degree in a specific specialty is not required for this classification.

On appeal, counsel states that the proffered position is a specialty occupation. Referring to job postings, counsel contends that the industry requires a bachelor's degree or the equivalent in a related field. Counsel states that the job description of the technical animator is so specialized and complex that it requires knowledge associated with the attainment of a bachelor's degree in computer science, computer programming, or computer graphics. Counsel states that a candidate must be knowledgeable in code structure in order to interface with programmers, and that this requires the application of mathematics and computer engineering theories and techniques that are normally associated with the attainment of a bachelor's degree. Counsel states that the proffered position has recently evolved, that it is not described in the *Handbook*, and that it is a common position in the industry. Counsel emphasizes that the proffered position's core duties involve computer programming. Counsel states that the director's denial incorrectly suggests that the computers and software used by smaller businesses are so simple that any person can program them. Finally, counsel attests that the petitioner had difficulty in recruiting candidates for the proffered position.

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 first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; a specific 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 specific 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

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 consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel states that the proffered position is not described in the *Handbook*. Yet, a review of the *Handbook* discloses that the director correctly concluded that the duties of the proffered position fall within the classification of artists and related workers. The *Handbook* provides:

Multi-media artists and animators work primarily in motion picture and video industries, advertising, and computer systems design services. They draw by hand and use computers to create the large series of pictures that form the animated images or special effects seen in movies, television programs, and computer games. Some draw storyboards for television commercials, movies, and animated features. . . .

Like the beneficiary who will design, create, and implement high quality animations into computer games, multi-media artists and animators use computers to create pictures that form the animated images or special effects seen in computer games. Thus, the duties of the proffered position are performed by multi-media artists and animators.

The director properly determined that the *Handbook* indicates that a bachelor's degree in a specific specialty would not be required for multi-media artists and animators. The *Handbook* states:

Training requirements for artists vary by specialty. Although formal training is not strictly necessary for fine artists, it is very difficult to become skilled enough to make a living without some training.

Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, technical animator.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to job postings. The director properly concluded that

the postings are not persuasive. The duties in the Legacy Interactive posting require the candidate to manage the programming staff; the proffered position does not have this duty. The director properly concluded that the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) provides that the organizations in the postings must be similar to the petitioner. Pixar and Disney's VR Studio differ in size and scope from the petitioner. The posting from Legacy Interactive does not describe the nature of the company; thus, the AAO cannot determine whether it is similar to the petitioner. For these reasons, the petitioner fails to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The AAO notes that the postings submitted in response to the request for evidence are, as the director stated, illegible.

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 in a specific specialty. As already discussed, the *Handbook* reveals that the duties of the proffered position are performed by multi-media artists and animators, positions that do not require a specific bachelor's degree.

There is no 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.

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. Once again, the *Handbook* reveals that the duties of the proffered position are performed by multi-media artists and animators, positions that do not require a specific bachelor's degree.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. 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.