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**U.S. Citizenship  
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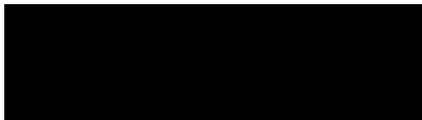
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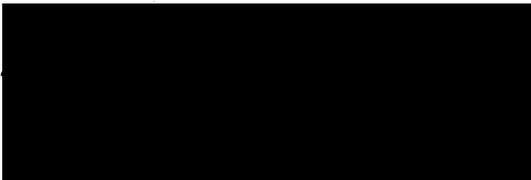
FILE: WAC 04 192 50782 Office: CALIFORNIA SERVICE CENTER Date: **JAN 20 2006**

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*For Michael T. Kelly*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is an advertising/design company. It seeks to employ the beneficiary as a website designer and to classify him 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 on the ground that the record failed to establish that the proffered 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.

As provided in 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 notice of intent to deny (NOID); (3) the petitioner's response to the NOID; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In its initial submission, including Form I-129 and an accompanying letter, the petitioner described itself as an advertising and marketing company established in 1998 – with six employees and gross annual income of \$600,000 – that provides its clients a variety of services in advertising, graphic design, website design, print materials, photography, videography, trade show booths, motion graphics, multimedia, commercials, press releases, and editorial support. The petitioner stated that, in order to meet the demand of e-commerce related advertising, it needed to hire “an additional web site designer to design, update and maintain our clients’ websites.” The petitioner indicated that the position requires education and experience in the areas of website design and programming, visual basic, Adobe Photoshop, Adobe Illustrator, and other graphic-related design software. The beneficiary is qualified for the position, the petitioner declared, by virtue of his bachelor of arts degree in advertising from Pepperdine University in Malibu, California, granted in April 2003, as well as his work as assistant to the webmaster at Pepperdine University, where he assisted in updating and maintaining the law school website.

The job description submitted with the petition describes the duties of the website designer as follows:

Utilizes knowledge of fine arts, graphic design and various graphical software tools and technologies (including HTML, ASP and Java scripting, Adobe Photoshop and Illustrator) to design and develop web graphics for corporate clients of an advertising/design office. Incorporates graphic scripts, conceptualizes graphical interface, and integrates video, animation, still images, text and audio into the graphical design of web pages.

Transforms graphic concepts into specific web pages, makes changes to web site/pages based on feedback from customers, works closely with the advertising director to create visually stunning designs that distinctly communicates the client’s objective in the field. Stays abreast of any industry-wide changes in design philosophy and any new tools and technologies being used for web design. Performs quality assurance checks to ensure usability across multiple platforms.

In its response to the NOID, the petitioner asserted that the duties of the proffered position include complex graphic design functions which reflect the duties of a web graphic designer, not just a web designer. According to the petitioner, the position falls under the occupational sub-category of graphic designers, as described in the Department of Labor (DOL)’s *Occupational Outlook Handbook (Handbook)*. The petitioner interprets language in the *Handbook* discussing the educational recommendations for graphic designers as indicating that a baccalaureate or higher degree in fine arts, business, merchandising, marketing, psychology or a related field such as advertising is a prerequisite for such positions, thus making graphic designers a specialty occupation under the Act.

The director found that the proffered position falls within the DOL *Handbook*’s broad occupational category of “computer systems analysts, database administrators, and computer scientists” – in particular, the occupational sub-category of web designers – and concluded, based on language in the *Handbook* focusing on webmasters, that such a position does not require a baccalaureate degree in a specific specialty. The director declared that the petitioner’s claim, in response to the NOID, that the proffered position is similar to that of a graphic designer represented an amendment to the petition, because it materially changed the original description of the position. Citing applicable regulations and case law, the director stated that the amended description of the position could not be considered in deciding the

petition. The director found that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated in the regulation at 8 C.F.R § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director erred in finding that the proffered position is that of a web designer, rather than a web graphic designer. Counsel maintains that the categorization of the position as a web graphic designer in the petitioner's response to the NOID is consistent with the duties of the position set forth in the original job description, and therefore does not represent a material change to or amendment of the petition. In counsel's view, the duties of the proffered position more closely resemble those of a graphic designer, as described in the *Handbook*, than they do the narrower occupation of web designer. According to counsel, the proffered position meets all four alternative criteria of a specialty occupation at 8 C.F.R § 214.2(h)(4)(iii)(A).

The AAO agrees with counsel that adding "graphic" to the position's title in the response to the NOID did not materially change the petition because it simply reflects the duties of the position originally described by the petitioner. Accordingly, there has been no amendment to the petition.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

Graphic designers, an occupational sub-category of designers, are described in the *Handbook*, 2004-05 edition, at 242:

*Graphic designers* plan, analyze, and create visual solutions to communications problems. They use a variety of print, electronic, and film media and technologies to execute a design that meet clients' communication needs. They consider cognitive, cultural, physical, and social factors in planning and executing designs appropriate for a given context. Graphic designers use computer software to develop the overall layout and production design of magazines, newspapers, journals, corporate reports, and other publications. They also produce promotional displays and marketing brochures for products and services, design distinctive logos for products and businesses, and develop signs and signage systems – called environmental graphics – for business and government. An increasing number of graphic designers are developing material for Internet Web pages, computer interfaces, and multimedia projects. Graphic designers also produce the credits that appear before and after television programs and movies.

The AAO determines that the duties of the proffered position are reflected in the foregoing occupational description, especially in its reference to graphic designers developing material for Internet Web pages. Based on the petitioner's description of the proffered position, the other documentation of record, and the

*Handbook* information quoted above, the AAO concludes that the web graphic designer position at issue in this petition is a type of graphic designer. The AAO also concludes that the proffered position qualifies as a specialty occupation under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) because the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a job-related specialty.

To be qualified to perform services in a specialty occupation, the beneficiary must meet one of the following criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(C):

- (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.

As previously indicated, the beneficiary has a bachelor of arts degree in advertising from Pepperdine University in Malibu, California. The record includes the beneficiary's transcript from the university showing that her coursework included advertising fundamentals, advertising media, communication graphics, advertising copywriting and layout, advertising research, advertising campaign management, graphic design, computer animation, and advanced computer graphics. The AAO determines that all of these courses are directly related to, and required by, the proffered position of web graphic designer. The AAO concludes, therefore that the beneficiary qualifies under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) to perform the services of the specialty occupation.

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of that occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the AAO will sustain the appeal and approve the petition.

**ORDER:** The appeal is sustained. The petition is approved.