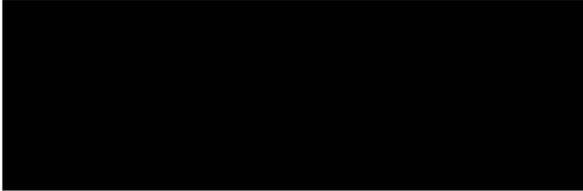




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FILE: WAC 04 800 60619 Office: CALIFORNIA SERVICE CENTER Date: JUN 20 2006

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 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 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 magazine publisher. It seeks to employ the beneficiary as a graphic designer. 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 stating that the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

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), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 are 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a graphic designer. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Create original art work with visual style, design and layout that is appropriate for a monthly magazine focusing on small businesses;
- Draw and print charts, graphs, illustrations, and other artwork using computers;
- Arrange layout based upon available space, knowledge of layout principles and aesthetic concepts;
- Enter information into the computer to create layouts for clients;
- Study illustrations and photographs to plan presentation of material, product or service;
- Review final layouts and suggest improvements as needed;
- Confer with clients regarding layout designs, illustrations or rough sketches of material according to instructions of clients or supervisor; and
- Interact with clients and vendors to produce pieces that meet their objectives within time and budget constraints.

The petitioner finds the beneficiary qualified to perform the duties of the proffered position by virtue of his foreign education which has been determined by a credentials evaluation service to be equivalent to a bachelor of fine arts degree with a major in advertising from an accredited college or university in the United States.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those performed by graphic designers, not desktop publishers as stated by the director. Counsel submitted, on appeal, an opinion letter from ██████████ Professor of Graphic Design at Auburn University. ██████████ opined that the duties of the offered position are those of a graphic designer, not a desktop publisher, and that a baccalaureate degree in a graphic design-related discipline is the standard minimum qualification for employment in the position throughout the industry. This and other evidence of record establish the position as a graphic designer. Upon review of the record, the petitioner has established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). The *Handbook*, 2006-07 edition, notes that a bachelor's degree is required for most entry-level design positions and that bachelor of fine art degree programs in graphic arts are granted at 4-year colleges and universities. The proffered position does, therefore, qualify as a specialty occupation.

The final issue to be determined is whether the beneficiary is qualified to perform the duties of a specialty occupation. The director did not determine this issue as the petition was denied on another ground. The record establishes that the beneficiary's foreign education is equivalent to a bachelor of fine arts degree, with a major in advertising, from an accredited college or university in the United States. The beneficiary is, therefore, qualified to perform the duties of the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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 and the appeal shall accordingly be sustained.

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