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U.S. Citizenship
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APR 05 2007

FILE: WAC 05 001 53284 Office: CALIFORNIA SERVICE CENTER Date:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The 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 hotel, restaurant, and bar that seeks to employ the beneficiary as a marketing manager/graphic designer. 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 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; (5) the petitioner's motion to reconsider; (6) the director's dismissal of the motion to reconsider; and (7) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on two grounds: (1) his determination that the petitioner had failed to demonstrate that the proposed position qualifies for classification as a specialty occupation, and (2) his determination that the petitioner had failed to demonstrate that the beneficiary qualifies to perform the duties of a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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 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 proposed position.

In her April 29, 2005 response to the director’s request for additional evidence, counsel described the proposed duties as follows:

The Manager/Graphic Designer plans and executes marketing projects for the hotel and for the restaurant and bar, under the petitioner. It entails the application of highly specialized management expertise, which impacts the Petitioner’s revenue. [The beneficiary] personally plots and designs the company’s graphic works, such as advertisements, promotional displays, menus[,] etc. She will also be responsible for restructuring the company’s website, and will undertake the responsibility for restructuring and managing the site. In addition to the duties previously set forward, [the beneficiary] supervises her assistant as well as other hotel workers within the restaurant and bar; she also performs marketing manager functions. Because Japanese guests require a different form of hospitality than U.S. guests, [the beneficiary] is invaluable to the overall efficiency of the operation. From [a] marketing prospective [sic], she manages customer service, while also customizing that service to suit the Japanese clientele.

In determining whether a proposed 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 Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. In its adjudication of this appeal, the AAO consulted the 2006-2007 edition of the *Handbook*.

In pertinent part, the *Handbook* states the following regarding the duties of graphic designers:

Graphic designers—or graphic artists—plan, analyze, and create visual solutions to communications problems. They decide the most effective way of getting a message across in print, electronic, and film media using a variety of methods such as color, type, illustration, photography, animation, and various print and layout techniques. Graphic designers develop the overall layout and production design of magazines, newspapers, journals, corporate reports, and other publications. They also produce promotional displays, packaging, and marketing brochures for products and services, design distinctive logos for products and businesses, and develop signs and signage systems—called environmental graphics—for businesses and government. . . .

Graphic designers use a variety of graphics and layout computer software to assist in their designs. . . .

Graphic designers sometimes supervise assistants who carry out their creations. . . .

The AAO finds that, although the duties of the petitioner's proposed position are described in fairly general terms, they are consistent with the evidence of record. The AAO therefore agrees with the petitioner's characterization of the proposed position as primarily that of a graphic designer.

The *Handbook* states the following regarding the educational requirements for graphic designers:

A bachelor's degree is required for most entry-level and advanced graphic design positions. . . .

Accordingly, the AAO finds that the proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

The record establishes that the beneficiary earned a bachelor's degree in journalism, with a minor in visual communications. She is therefore qualified to perform the duties of this specialty occupation.

The petitioner has established that the proposed position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the appeal will be sustained and the petition approved.

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.

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