



U.S. Citizenship
and Immigration
Services



FILE: WAC 04 172 53199 Office: CALIFORNIA SERVICE CENTER Date: AUG 15 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:

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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 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 an action film entertainment company involved in film, television and video motion capture production. It seeks to employ the beneficiary as a film and video director. 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 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 film and video director. 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 be in charge of all production activities of the cast and crew in the task of translating the concepts, actions and ideas in the script into cinematic/video images and sound in such a way that an entertaining and viable result is accomplished on screen. Specifically, the beneficiary would:

- Interpret a screenplay to the screen in such a manner that an entertaining and commercial story is told with a consistent point of view;
- Communicate with actors and camera personnel to determine the best shot to present a story line and ensure that all story elements are translated to the screen in an entertaining style;
- Work with the producer in the development of the script and in the packaging of the project with acting talents;
- Work with the producer in selecting actors for projects;
- Select an assistant director;
- Select all set operations personnel, including make up artists, costume designers, motion capture operators, computer operators, fight choreographers, and stunt actors;
- Survey and select film locations;
- Make changes to the script to fit production limitations;
- Communicate with the screenplay writer to make changes to adapt to the screen;

- Work out all camera angles for each scene and direct camera movement;
- Supervise and/or determine the wardrobe and makeup to be used;
- Supervise and select the placement of props and set dressings as such relate to the dramatic interpretation of the story and the photographic perspective as far as size, color and texture;
- Cast the picture or supervise casting;
- Work with actors in blocking their actions prior to filming;
- Direct the action and performance of all on-camera talent in such a way that their performances maintain story and action continuity;
- Delegate the direction of extras and background talent to assistant directors;
- Direct the intensity and placement of special effects in cooperation with the special effects team during motion capture projection;
- Supervise second units for rehearsal and shooting;
- Check the framing and composition of the image through the camera when desired;
- Direct all rehearsals of talent, motion capture crew, camera, sound, effects, background atmosphere, etc.;
- Give cues during filming;
- Place the teleprompter, if used, and direct dialogue;
- Watch dailies and select preferred angles; and
- Supervise the first cut of the picture/video.

The petitioner requires a minimum of a bachelor's degree in film production or a related field for entry into the proffered position.

The petitioner has established that the proffered position qualifies as a specialty occupation. The Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that persons who become actors, producers, and directors follow many paths. Employers generally look for people with the creative instincts, innate talent, and intellectual capacity to perform. In television and film, actors and directors typically start in smaller television markets or with independent movie production companies and then work their way up to larger media markets and major studio productions. The *Handbook* states that formal dramatic training, either

through an acting conservatory or a university program is generally necessary, but that some people successfully enter the field without it. The *Handbook* does not state that a baccalaureate level education in a specific specialty is normally the minimum requirement for entry into these positions. In this particular instance, however, the duties of the position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Much of the work performed by the petitioner involves the transformation of live-action (photographed “reality”) into special effect animated digital media. That process utilizes “motion-capture,” a process involving computerized capturing and digitizing of live-action for the purpose of integrating this information into video game development and Internet applications. Motion-capture is an area of expertise that requires the use of specialized equipment and personnel. Further, the beneficiary is involved in virtually all areas of project production and development, including the editing of the final product. Under these circumstances, the petitioner has established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The final issue to be determined is whether the petitioner is qualified to perform the duties of the offered position. The director did not comment on this issue as the petition was denied on another ground. The record, however, is sufficient for the AAO to make that determination. The petitioner has a Master of Fine Arts degree in Motion Picture, Television and Recording Arts from _____ University. That degree is closely related to the duties of the proffered position, and qualifies the beneficiary to perform the duties of the position. 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

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.