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U.S. Department of Justice

Immigration and Naturalization Service

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[redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: LIN-01-053-52681 Office: Nebraska Service Center Date: JAN - 8 2003

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

PUBLIC COPY

[redacted]

INSTRUCTIONS:
This is the decision 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further consideration.

The petitioner designs and creates high-end television commercials. It has 56 employees and a gross annual income of $9 million. It seeks to employ the beneficiary as a senior telecine colorist for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

> an 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.

The director denied the petition because the duties described by the petitioner appeared to relate to the job of a broadcast technician, an occupation that does not require a baccalaureate degree. On appeal, counsel states, in part, that the proffered position is not similar to a broadcast technician position. Counsel submits an opinion from an academic expert who states that the proffered position of senior telecine colorist requires a baccalaureate degree in television production or an equivalent thereof. Counsel further states that the beneficiary may manage, train, and mentor junior colorists who hold baccalaureate degrees in fine arts with a focus on photography or film, and that the petitioner normally requires such a degree for the proffered position.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

> . . . a Senior Telecine Colorist is responsible for the color correction of and colorization of all film and video elements used within a television commercial or video presentation . . . will operate our Telecine Suite

> utilizing devices such as the DaVinci 2K color corrector, the Ursa/Y-Front telecine, grain reducers, noise reducers, Adobe's PhotoShop and others. This position will work with members of a project team to realize the vision of the specific project and may manage, train and mentor Junior Colorists. Such Junior Colorists hold Bachelor's degrees in Fine Arts with a focus on Photography or Film. This position is akin to Color Corrector as defined by the Department of Labor's (DOL) *Dictionary of Occupational Titles* . . .

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.

The proffered position appears similar to that of a multi-media artist. A review of the Occupational Outlook Handbook, 2002-2003 edition, at pages 118-119 finds that 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. Many colleges and universities offer degree programs leading to the Bachelor in Fine Arts (BFA) and Master in Fine Arts (MFA) degrees. Independent schools of art and design also offer postsecondary training in the fine arts leading to an Associate in Art (AA) or Bachelor in Fine Arts (BFA) degree. Formal educational programs in art also provide training in computer techniques.

The record contains a letter dated April 3, 2001, from an industry expert who states, in part, that:

> From my experience as a Tenured Professor and in working with my students for the past twelve years, I have realized that the trend in the Film/Television Production and related Post-Production industries is for such

> production facilities to hire individuals with baccalaureate degrees for studies in Film or Television Production. In most cases the degree is necessary just to gain an entry-level position in this competitive industry.

The record contains a letter dated April 5, 2001, from another industry expert who states, in part, that:

> From my experience with ITS and my knowledge of the postproduction industry, I have realized that the industry trend is for postproduction houses, such as [the petitioner], to hire individuals for Telecine Colorist positions who have baccalaureate degrees for studies in Film or Television Production or equivalent progressive professional level experience. A Telecine Colorist is usually responsible for the color correction of and colorization of all film and video elements used within a film, television commercial or video presentation. Such work requires the sophisticated knowledge of the operation of highly technical and elaborate Telecine equipment such as the Da Vinci 2K color corrector, the Ursa/Y-Front telecine, grain reducers and noise reducers and the application of scientific and theoretical principles relating to color, light, and film engineering.

It is noted that not all senior telecine colorist positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the duties are of such complexity as to require a baccalaureate degree in a specific and related specialty. The petitioner has also submitted evidence that its previously employed telecine colorists held baccalaureate degrees in a related and specific specialty. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

The director has not determined whether the beneficiary qualifies to perform services in a specialty occupation. It is noted that the beneficiary does not hold a baccalaureate degree in any field of study. Two evaluators from a credentials evaluation service found the beneficiary's employment experience equivalent to a U.S. baccalaureate degree in television production. The record, however, does not contain evidence that either evaluator is an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(1). Accordingly, the matter will be remanded to the director to make such a determination and to review

all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.