



U.S. Citizenship  
and Immigration  
Services

D

[Redacted]

FILE: EAC 02 204 53555 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:

[Redacted]

OCT 29 2004

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:

[Redacted]

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, Director  
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 dismissed. The petition will be denied.

The petitioner is a manufacturer and retailer of clothing, shoes, and jewelry that seeks to employ the beneficiary as a fashion designer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 because the proffered position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not 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.

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 proffered position.

The record of proceeding before the AAO contains: (1) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The director found that the beneficiary was not qualified for the proffered position because the record lacks sufficient documentary evidence establishing that the beneficiary's education, experience, and training are equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states, in part, that the beneficiary's professional education and employment history have been reviewed and evaluated by Dr. [REDACTED] of the International Council, who determined that the beneficiary holds the equivalent of a bachelor's degree in fashion design. Counsel submits evidence that Dr. [REDACTED] evaluations have been accepted on numerous other occasions by CIS.

The record contains the following documentation pertaining to the beneficiary's qualifications:

- Beneficiary's resume;
- Diploma of completed secondary education in Bulgaria, from "Vela Blagoeva Secondary Vocational and Technical School of Clothing" with the profession of "Operator in Sewing Production" and a major in "Operator in Production of Clothing from Fabrics and Knitwear";
- Beneficiary's master's degree in landscape architecture, and transcripts, conferred by a Bulgarian institution;
- Credentials evaluation from Dr. [REDACTED] from the International Education Council, who found that the beneficiary's general and professional education and professional work experience are equivalent to a bachelor's degree in fashion design; and
- Translations of two magazine articles about the beneficiary, indicating that she is a fashion designer, stylist, and co-creator of SAX magazine.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in fashion design or a related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree in fashion design from a U.S. college or university. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from 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;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains two magazine articles about the beneficiary and photographs of various subjects. Counsel asserts that this documentation substantiates the beneficiary's resume.

The documentation does not establish equivalence to a baccalaureate degree in fashion design. The magazine articles do not provide any specifics of the beneficiary's employment, such as the length of her employment at the businesses specified on her resume. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. The record contains a resume indicating that the beneficiary worked as a fashion director for SAX magazine from 1999-2001, and as a senior fashion consultant for M&A Promotion Group from 1997 to 1999. The record, however, contains no employment letters to corroborate such employment. Furthermore, not even the beneficiary's resume indicates the exact dates of her employment with these two businesses. As such, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is fashion design. Furthermore, the record contains no evidence that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the evaluator from the International Education Council cannot be considered a "recognized authority" because he does not specifically describe what documentation he reviewed pertaining to the beneficiary's employment. It appears that he based his conclusions regarding the beneficiary's employment entirely on the information provided by the beneficiary in her resume. Furthermore, the record does not contain recognition of expertise by at least two recognized authorities.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

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 not sustained that burden.

**ORDER:** The appeal is dismissed. The petition is denied.