

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D1



FILE: WAC 07 142 53306 Office: CALIFORNIA SERVICE CENTER Date: JAN 31 2008

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:

SELF-REPRESENTED

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 of the service center 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 retail business that seeks to employ the beneficiary as an assistant 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 director denied the petition determining that the record failed to establish that the beneficiary was qualified to perform the duties of the specialty occupation as of the filing date of the petition.

The record of proceeding before the AAO contains: (1) the Form I-129 filed on April 3, 2007, and supporting documentation; (2) the director's denial letter; and (3) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner is seeking the beneficiary's services as an assistant designer. The petitioner indicated that the beneficiary is a qualified candidate for the job because she would earn a foreign Bachelor of Arts degree in Product Design and Development in July 2007.

The director found that the beneficiary was not qualified for the proffered position because as of the petition's filing date, the beneficiary had not completed the required coursework for her bachelor's degree.

On appeal, the petitioner's counsel states, in part, that the beneficiary is qualified for the proffered position because she holds the U.S. equivalent of a bachelor's degree in fashion design and product development. The petitioner's counsel submits the beneficiary's college transcripts and a credentials evaluation as supporting documentation.

Upon review of the record, the petitioner has failed to establish that as of the filing date of the petition on April 3, 2007, the beneficiary was qualified to perform the duties of the proffered position. The record contains a letter dated March 16, 2007 from the Placement Broker of the London College of Fashion indicating that the beneficiary would complete the coursework for her bachelor's degree on May 14, 2007, and receive her bachelor's degree on July 17, 2007. On appeal, counsel for the petitioner submits a letter dated May 17, 2007 from the senior administrator of the London College of Fashion indicating that the beneficiary was expected to complete her bachelor's degree in July 2007. These letters are noted. The record, however, contains no evidence demonstrating that as of the filing date of the petition on April 3, 2007, the beneficiary had completed the coursework for her bachelor's degree or had received her bachelor's degree. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). In view of the foregoing, the petitioner has failed to establish that as of the filing date of the petition, the beneficiary was 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.