

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

D,



FILE: EAC 07 134 51873 Office: CALIFORNIA SERVICE CENTER Date: **JUL 22 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:



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, 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 The decision of the director will be withdrawn. The petition will be remanded.

The petitioner is a fashion design, manufacturing, and distribution business that seeks to employ the beneficiary as a part-time assistant fashion 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 because the proffered position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel and the petitioner's responses to the RFE; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

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.

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) consistently interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000).

The petitioner seeks the beneficiary’s services as a part-time assistant fashion designer. Evidence of the beneficiary’s duties includes: the petitioner’s March 15, 2007 letter in support of the petition and the petitioner’s June 7, 2007 response to the director’s RFE. As stated by the petitioner, the proposed duties are as follows:

- Formulate concepts for fashion designs using research of recent fashion trends and knowledge of fashion/apparel design;
- Advise management or the design director of all aspects of design for the development of apparel line for women and girls;
- Consult with other designers or staff about concept and color development along with presentation and mood boards;
- Analyze fashion trends and predictions, confer with sales and management executives, and integrate with customers’ tastes and knowledge of design to create new designs for clothing and accessories;

- Work with design director to organize the collection including concept and color development, selection of fabrics, flat sketching, specimens and fitting;
- Create presentation boards and accurate sketches using design software;
- Organize and conduct research program for textile and clothing by utilizing principles of fashion design studies under the supervision of the executive director, if needed;
- Write advertising copy and articles of interest about the petitioner's business activities such as developing new products and advertising its new and/or existing items;
- Inform designers and manufacturing personnel of the research results of current fashions, style trends, fashion art, and fabric materials;
- Make presentations to management and/or customers about new business concepts based on the research of advanced computer-assisted plat pattern and tailoring techniques;
- Discuss sketched drawings of women's and/or girls' dress and other apparel with textile designers or fashion designers; and
- Sketch rough and detailed drawings of apparel and write specifications describing factors such as color scheme, construction, and type of materials to be used.

In an RFE, the director requested additional information from the petitioner, including documentation highlighting the nature, scope, and activity of the petitioner's business.

In response to the RFE, the petitioner's president stated, in part, that the petitioner is an importer, manufacturer, and wholesale distributor of women's wearing apparel that designs, sources, and markets women's sportswear, with 112 employees and a 2005 gross annual income of \$111.9 million. The petitioner submitted the following supporting documentation: the petitioner's 2005 federal income tax return; the petitioner's global customer list and worldwide manufacturing agent list; a list of the proposed duties and time allocations; a list of the petitioner's designers, including 11 fashion designers; copies of the degrees, W-2 forms and pay stubs for seven of the petitioner's fashion designers; a description of the petitioner's organizational structure and a list of its employees; the petitioner's job advertisements; and six industry letters with evidence of professional designers.

The director denied the petition determining that the proposed assistant fashion designer duties do not require a bachelor's degree. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered assistant fashion designer is a specialty occupation, that the proposed duties are the same duties as other fashion designers, and that the title “assistant” is used when an employee is newly hired and has less than three years of experience. Counsel also states that the record contains evidence to show that the petitioner normally requires a bachelor’s degree or an equivalent and that the degree requirement is common to the industry in parallel positions among similar organizations. Counsel states that the AAO has previously approved similar petitions. In support of the appeal, counsel submits copies of previously submitted documentation.

The AAO disagrees with the director's finding that the proffered position is not a specialty occupation. In this case, the proffered position is that of a fashion designer for the petitioning entity, which is an apparel business for pre-teen, teenage, young girl, and women markets, with a 2005 gross annual income in excess of \$111 million and more than \$8 million paid in salaries and wages. A review of the *Handbook*, 2008-09 edition, finds that, in fashion design, employers usually seek individuals with a 2-year or 4-year degree who are knowledgeable about textiles, fabrics, ornamentation, and fashion trends. In this instance, the evidence establishes that the duties are of such complexity as to require a baccalaureate degree in a specialized and related area. Therefore, the petitioner has satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petition may not be approved, however, because the director has not determined whether the beneficiary is qualified to perform the services of a specialty occupation. In this matter, the beneficiary holds a U.S. Associate in Applied Science degree in fashion design. The beneficiary also completed five semesters at the College of Arts & Physical Education at Sangmyung University in Korea, which an evaluator from a company that specializes in evaluating academic credentials equated to the completion of 88 American credits leading to a degree from an accredited institution of higher education in the United States. The evaluator also concluded that the beneficiary’s foreign coursework, her professional training and more than one year of progressively responsible work experience in fashion design, and related areas, are the equivalent of a Bachelor or Science degree in fashion design from an accredited institution of higher education in the United States. The record, however, contains no independent evidence, such as a letter from a university provost, that the 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). Moreover, the record contains no evidence in support of the evaluator’s assertion that New School University is an accredited institution of higher education in the United States. Nor does the evidence of record show how the beneficiary’s two years of associate degree studies in the United States are not repetitive of her foreign studies. Thus, the evaluation carries no weight in these proceedings. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

In addition, the director has not determined whether the beneficiary is subject to the 2-year foreign residence requirement under section 212(e)(iii) of the Act. The director must afford the petitioner reasonable time to provide evidence pertinent to these issues, and any other evidence the director may deem necessary. The

director shall then render a new decision based on the evidence of record at it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's June 22, 2007 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.