

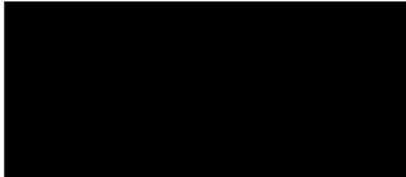


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U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC-99-201-52827 Office: California Service Center

Date: 1007 AON 0 2

IN RE: Petitioner:
Beneficiary:

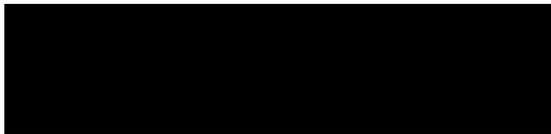


20 NOV 2001

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)

Public Copy

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting 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 appeal will be dismissed.

The petitioner is a jewelry business with seventeen employees and a stated gross annual income of just under \$1.1 million. It seeks to employ the beneficiary as a jewelry setter for a period of two and one-half years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and supporting material.

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 petitioner had not demonstrated that a baccalaureate degree in a specific field of study is the standard minimum requirement for the proffered position. On appeal, counsel asserts that the nature of the duties involved in the crafting of original molds for the mass production of various jewelry design settings is so specialized and complex that normal jewelry setters are not able to perform such tasks. Counsel argues that the beneficiary's prior position as a press engineer allowed him to gain the special talent and experience needed to handcraft such original molds.

Counsel's statements on appeal are not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In a letter dated July 2, 1999, the petitioner's president described the duties of the offered position as follows:

The duties of the jewelry setter will be to set precious, semiprecious, or ornamental stones in rings, earrings, bracelets, brooches, metal optical frames, and other jeweled items, using hand tools. They must be able to

utilize files, chisels, and hand or electric drills in a very artistic manner.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

The proffered position appears to combine the duties of a jeweler and a precious stone and metal worker. The Department of Labor's Occupational Outlook Handbook, (Handbook), 2000-2001 edition, at pages 455-456 does not list any requirement for a baccalaureate or higher degree in a specialized area for employment as a jeweler and a precious stone and metal worker. Although colleges and art and design schools offer programs that can lead to a bachelor's or master's degree of fine arts in jewelry design, jewelers' skills usually are learned in technical or vocational schools, through correspondence courses, or informally on the job. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background.

In the letter listing the duties of the proffered position which is cited above, the petitioner's president fails to state that any degree is required to fill the position, but rather specifies that in order to be a jewelry setter, "...one must have a minimum of two years of experience and a vast knowledge in the fields of gemology." Additionally, a review of the beneficiary's educational background shows that he appears to possess a two-year degree in business administration from a Korean junior college, rather than a degree in a specialized area as noted by the Handbook. Thus, the

petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

The petitioner has failed to demonstrate that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as jewelry design or gemology, for the offered position.

The petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions.

Counsel's assertion on appeal that the crafting of original molds for the mass production of various jewelry design settings is so specialized and complex that normal jewelry setters are not able to perform such tasks cannot be accepted. A review of the record reveals that the petitioner has not made any statement indicating that the production of such molds is included in the duties and responsibilities of the proffered position prior to the filing of the appeal. Even if the petitioner had indicated that the crafting of original molds was a particular duty of the position, such an activity is inherent to the duties performed by a jeweler and a precious stone and metal worker. This is clearly evidenced by the specific references to mold and model making in the description of the nature of work performed by a jeweler and a precious stone and metal worker at page 455 in the Handbook.

Furthermore, the Service cannot agree with counsel's argument that the beneficiary's prior position as a press engineer allowed him to gain the special talent and experience needed to handcraft such original molds. The record does not contain any description of the duties of, the nature of work performed by, or the educational requirements needed to become a press engineer. Without such information, it is impossible to determine whether the beneficiary's prior experience as a press engineer has any affect on his ability to handcraft jewelry molds, yet alone perform the proposed duties of the proffered position.

For the reasons discussed in the two prior paragraphs, it cannot be concluded that the petitioner has demonstrated that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Beyond the decision of the director, the record does not contain an evaluation of the beneficiary's credentials from a service which specializes in evaluating foreign educational credentials as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(3). As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.