



U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC-99-118-52179 Office: California Service Center

Date: NOV 20 2001

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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 textile manufacturing business with seven employees and an approximate gross annual income of \$300,000. It seeks to employ the beneficiary as a textile designer for a period of three years. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, the petitioner submitted a brief and additional documentation in support of the appeal.

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 fashion design is the standard minimum requirement for the proffered position. On appeal, counsel argues the decision of denial is erroneous because the Service relied on only part of the discussion on training and qualifications for fashion designers in the Department of Labor's Occupational Outlook Handbook, (Handbook), to reach its conclusion that fashion design is not a specialty occupation. Counsel cites Mindseye v. Ilchert, (1985) U.S.D.C., N.D. Cal., No. C84-6199, and submits a text copy of the above-cited decision.

Counsel's argument on appeal is 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 the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Will design women's and children's clothing, accessories and shoes.

Will analyze fashion trends and predictions.

Will confer with management on company's direction and focus based on comprehensive assessment of fashion trends and market forces.

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 Service does not agree with counsel's argument that the proffered position of textile designer would normally require a bachelor's degree in a specialized area. The proffered position appears to be that of a fashion designer. A review of the Department of Labor's Occupational Outlook Handbook, (Handbook) 2000-2001 edition, at pages 246-248 finds no requirement of a baccalaureate or higher degree in a specialized area for employment in the field of fashion design. According to the Handbook, employers seek individuals with a 2- or 4-year degree who are knowledgeable in the areas of textiles, fabrics, and ornamentation, as well as trends in the fashion world. In addition, talent and a good portfolio are often considered as significant as the beneficiary's specific educational background.

Counsel argues that the Service failed to consider the following statement found at page 248 of the Handbook: "Graduates of 2-year programs generally qualify as assistants to designers." Counsel argues that, since 2-year degrees are an entry-level requirement for positions as assistants to fashion designers, a 4-year degree will qualify one for entry into the field as a fashion designer. However, counsel cited only a portion of the text at page 248 of the Handbook. The complete citation reads as follows:

Formal training for some design professions also is available in 2- and 3-year professional schools that award certificates or associate degrees in design. Graduates of 2-year programs normally qualify as assistants to designers. The Bachelor of Fine Arts degree is granted at 4-year colleges and universities... A liberal arts education, with courses in merchandising, business administration, marketing, and psychology, along with training in art, also is a good background for most design fields.

Clearly, a reading of the complete text at page 248 of the Handbook supports the Service's conclusion that a baccalaureate degree in a specialized area is not a standard requirement for entry into most design fields. Certificates from two-year and three-year art schools and general liberal arts degrees, in combination with training in art, are also acceptable credentials for entry-level positions as designers.

Counsel argues that the decision in this case is erroneous in that it is inconsistent with holding in Mindseye v. Ilchert, supra. However, the facts and circumstances of that case are dissimilar from the present case. In Mindseye v. Ilchert, the petition was denied, and the appeal dismissed, based on a conclusion that the beneficiary's employment with Mindseye in particular was not professional because of the small size of the petitioner's operation and the relatively low salary offered to the beneficiary. The denial in this case was not based on the size of the petitioner's company or the proposed salary to be paid to the beneficiary, but rather on a conclusion that the petitioner had failed to establish that a baccalaureate degree in fashion design is a requirement for entry level positions in that field.

Additionally, the district court held in Mindseye v. Ilchert that the Service improperly relied on a precedent decision published in 1966 [Matter of Palanky, 12 I & N 66 (1966)], to look at the requirements for entry into the field of fashion design in 1985. In this case, the Service relied on a review of the Handbook, 2000-2001 edition, to reach its conclusion that a baccalaureate degree in fashion design is not currently a standard requirement for an entry-level position as a fashion designer.

Finally, the petitioner in Mindseye v. Ilchert submitted letters from three other clothing design companies stating that preference is given to employees with a baccalaureate degree. In this case, no such evidence has been submitted.

The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. As stated above, 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. Finally, the petitioner did not demonstrate 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, it is noted that the labor condition application (LCA) submitted by the petitioner was not certified by an authorized Department of Labor official pursuant to 8 C.F.R. 214.2(h)(4)(i)(B)(1). However, 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.