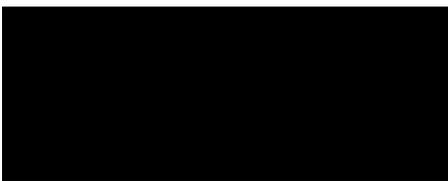




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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC-99-206-54198 Office: Vermont Service Center

Date: OCT 17 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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

Public Copy

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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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Robert P. Wichmann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is a furniture and interior design business with one employee and an unspecified gross annual income. It seeks to employ the beneficiary as a furniture designer for a period of three years. The director determined the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, the petitioner submitted a brief.

The Associate Commissioner dismissed the appeal reasoning that the beneficiary did not appear to hold a baccalaureate degree or its equivalent in any field of study. The Associate Commissioner also found, beyond the director's decision, that the proposed position appeared to combine the duties of a designer with those of a woodworker and did not require a baccalaureate degree in a specialized area.

On motion, the petitioner states in part that the beneficiary holds a bachelor's degree in engineering. The petitioner also states that the beneficiary has computer training in design. The petitioner also submits two evaluations of the beneficiary's educational background.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have 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, the 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 beneficiary holds a baccalaureate degree in electrical engineering communications conferred by a Ukraine institution. Two evaluators determined that the beneficiary's foreign education was equivalent to "a four year university degree." This Service uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. See Matter of SEA, Inc., 19 I&N Dec. 817 (Comm. 1988).

Though one of the evaluators is an adjunct professor at a U.S. university and the other is a deputy director at a law school in Ukraine, it has not been shown that either 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. Accordingly, the evaluations are accorded little weight.

Furthermore, even if the Service were to conclude that the beneficiary holds the equivalent of a baccalaureate degree in electrical engineering conferred by a U.S. institution, the beneficiary would still not be eligible to perform the duties of the offered position because it has not been persuasively shown

that the beneficiary possesses a bachelor's degree related to furniture design. Despite the petitioner's argument that the beneficiary holds the equivalent of a baccalaureate degree that is related to the proffered position, the record contains no independent evidence in support of such claim. The beneficiary's certificate in computer-aided design in furniture production is noted. It has not been shown by an evaluator with the above-described credentials, however, that the beneficiary's educational and training backgrounds are the equivalent of a baccalaureate degree related to furniture design.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes him to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation.

The term "specialty occupation" is 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.

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:

Design custom furniture for production based on design trends and characteristics of desired target market and clients. Evaluate proposals to determine feasibility to produce with guidance from supervisor. Design articles on AutoCAD and make changes with supervisor and client so client can visually see and work interactively with different styles and corresponding impacts such as cost factors, material availability, and schedule delays. Advises supervisor on cost increases due to style preferences, comfort, and market changes. Draws articles

to proportion based on industry standards on AutoCAD. Uses technical drawings to prepare production requirements, wood specifications, materials for padding, webbing, and core components inside the articles. Designs fixtures, forms, and tools used for production and builds models based on approved technical drawings. Constructs frame of article labeling specific parts and uses lathe, electric saws, hand implements for fastening, stapling, jiggling, and webbing and construction of sofa bed apparatus [sic]. Operates AutoCAD, computer, digital equipment scanner, internet, and routine office equipment and standard tools for construction assembly of article.

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.

First, the Service does not agree with the petitioner's argument that the proffered position of furniture designer would normally require a bachelor's degree in a specialized area. A review of the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 246-248 finds no requirement of a baccalaureate or higher degree in a specialized area for employment in most areas of design. Some interior designers hold baccalaureate degrees in design or a related field while others hold certificates or diplomas from two-year and three-year schools of design. Several schools of design and universities offer degrees in furniture design. In addition, talent and a good portfolio are often considered as significant as the beneficiary's specific educational background. In view of the foregoing, it is concluded that the

petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

Second, 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. Third, 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.

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 decision of the Associate Commissioner dated March 27, 2000, is affirmed.