



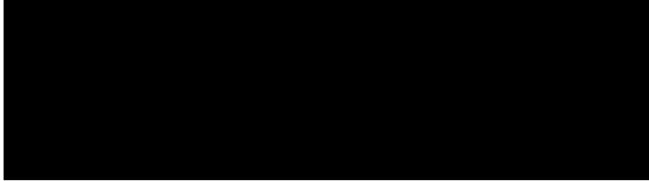
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U.S. Department of Justice

Immigration and Naturalization Service

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prevent clearly unwarranted
diversion of personnel resources

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



File: EAC-01-095-50585 Office: Vermont Service Center

Date: 24 April 2002

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)

IN BEHALF OF PETITIONER:



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

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a jewelry design and manufacturing business with 5 employees and an approximate gross annual income of \$350,000. It seeks to employ the beneficiary as a jewelry designer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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 determined that 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 argues that the petitioner desires to re-create the Russian Empire, the Art Deco, and the Art Nouveau styles of jewelry design. Counsel states that such design requires a high level of sophistication, knowledge of art history, and an understanding of the jeweler's art which can only be achieved by a designer who is schooled in those styles. Counsel contends that the position being offered requires a solid college level education in art, design, style, and art history.

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:

[The beneficiary's] duties as jewelry designer will include the refinement of Majestic's designs and motifs

to conform to the specifics and details of Faberge and Cartier original designs and suitable to Majestic's manufacturing capabilities. He will review the entire line of current products and design improvements so as to raise the resulting quality and refinement of the items.

In response to a Service request for additional evidence, the petitioner further described the duties of the position as follows:

- project, plan and design geometric art objects;
- paint and color enamels;
- application of art details to objects, from tableware to fine jewelry . . . ;
- handle and manipulate the production equipment in such a manner as to solve design and production problems and achieve the desired product;
- apply knowledge of human and animal anatomy to design projects to create esthetic and pleasing results;
- quality control the production results so as to ensure that quality is not compromised;
- apply knowledge of all decorative materials and the possible creative applications to projects and production runs so as to enhance the artistic worth and value.

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 counsel's argument that the proffered position of jewelry designer would normally require a bachelor's degree in jewelry design, gemology, or a related field. The proffered position appears to combine the duties of a jeweler and a precious stone and metal worker. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at pages 552-554 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a jeweler or 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.

The Service acknowledges that the position being offered requires more refined artistic skills in order to design and create high-quality jewelry and other decorative items which conform to the style of Faberge and Cartier. However, while counsel argues that these skills cannot be learned through apprenticeship or in-house training programs, neither counsel nor the petitioner has submitted any evidence to show that the acquisition of these skills requires a bachelor's degree in a specialized area. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

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 such as jewelry design or gemology, for the offered position. The position being offered is a new position created by the petitioner to expand the range and quality of the items it designs and manufactures. It is noted that the petitioner indicates that four of its current employees have baccalaureate degrees and the other two have art school or secondary education. However, the petitioner has not submitted any documentation to show that any of its employees have a baccalaureate degree in a specialized area such as jewelry design, gemology, or a related field. It is concluded that the petitioner has not shown that it requires a bachelor's degree in a specialized area for the proffered 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 appeal is dismissed.