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U.S. Department of Justice

Immigration and Naturalization Service

DP

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

[redacted]

File: SRC 01 217 52094 Office: TEXAS SERVICE CENTER Date: DEC 16 2002

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, Director
Administrative Appeals Office

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

The petitioner is described as a new business specializing in tailoring in American and ethnic dress in Kissimmee, Florida. The company was established in 2001, and claims a staff of two and a gross annual income of $145,000. It seeks to temporarily employ the beneficiary as a custom tailor for a period of three years. The director determined that the petitioner had not established that the position offered to the beneficiary was a specialty occupation.

On appeal, the petitioner asserts that the position offered to the beneficiary is a specialty occupation, and provides more documentation.

Section 214(i)(l) of the Act, 8 U.S.C. 1184 (i)(l), 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.

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 field 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 issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation.

In the initial petition filing, the petitioner described the proffered position as the following: "Custom tailoring and alteration of American, Arabic, Asian and Indian dresses, occasionally dry cleaning and pressing the dresses." The beneficiary's present occupation and prior work experience is listed as "dress designing, cutting, pattern making, sewing and

stitching, tailoring and dying of dresses and fabric. Also knitting, embroidery, dry cleaning, alteration and pressing experience."

A diploma in the name of Ruhksana Shamim and issued by the Department of Arts at the University of Karachi in 1982 and a second diploma in the name of Ruhksana Shafiq issued by the Gulshan Vocational School in 1984 were also placed on the record. Coursework at the latter school included pattern making and cutting, sewing and stitching, machine and hand embroidery, designing art, mass production, knitting and appliqué work, fabric care, and dying and transfers.

On September 7, 2001, the director asked for additional information for the instant petition. In particular, he asked for documentation that clearly establishes that the position to be filled by the beneficiary requires a tailor with a bachelor's degree and that the petitioner has consistently required others in that same position to hold at least a baccalaureate degree. The director also asked for additional evidence that the degree requirement is common to the industry in parallel positions among similar organizations, or that the nature of the specific duties of a tailor are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In response, the petitioner stated that two positions were to be filled by tailors with bachelor's degrees. The petitioner also stated:

> [These] tailors not only will perform custom dress designing but will provide interrelationship with upscale customers. These tailors will also help in expansion of market. These activities will create the jobs of twelve more tailors within two years of operation and will create the jobs of 20 more workers during third year of thee operation. These additional workers will not be required to hold a bachelor degree.

In addition, the petitioner stated that since Specialty Products & Services is a new company, no records were available of previous employees and their educational levels. The petitioner also stated while a baccalaureate degree normally is not the minimum requirement for entry into the position of a tailor, it is customary for a dress designer to hold some type of bachelor's degree. The petitioner submitted two resumes of applicants who had applied for the position offered to the beneficiary. She pointed out that these applicants both held university degrees, even if they did not have expertise with clients with multicultural or ethnic backgrounds. In addressing whether a degree requirement is common to the industry in parallel positions among similar

organizations, the petitioner provided several Internet websites on fashion or sewing for further corroboration.

On January 10, 2002, the director denied the petition stating that the petitioner had failed to establish that the proffered position met the criteria of a specialty occupation. The director maintained that none of the additional evidence provided by the petitioner was sufficient to meet any of the four criteria necessary to establish the tailor position as a specialty occupation.

On appeal, the petitioner states that the documents submitted with the appeal establish that the petitioner actually requires a tailor with a background in business and market research with a bachelor's degree. The petitioner again submits the same two resumes for other applicants who applied for the tailor position. Also submitted are job announcements from the Internet that the petitioner claimed are for parallel positions among similar organizations of the industry, and an Internet website with information on a United States professional association of custom clothiers, the members of which all had college degrees. Finally the petitioner submits additional financial documents for the petitioner's business.

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.

Upon review of the record, the petitioner does not appear to have established any of the four regulatory criteria with regard to qualifying the position in question as a specialty occupation. Factors often considered by the Service when determining whether the occupation requires a degree or the industry standard include: whether the Department of Labor's (DOL) Occupational Outlook

Handbook (Handbook) reports that the industry requires a degree, whether the industry's professional association has made a degree a minimum entry requirement, and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." Shanti, Inc. v. Reno, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting Hird/Blaker Corp. v. Slattery, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The original job description provided by the petitioner appears to be most closely related to a custom tailor. The DOL Occupational Outlook Handbook (Handbook) on page 542 examines the field, "Textile, Apparel, and Furnishings Occupations," which contains references to custom tailors. Under training and other qualifications, it states:

> Most employers prefer to hire high school graduates for jobs in textile, apparel and furnishing occupations. Entrants with postsecondary vocational training or previous work experience in apparel production usually have a better chance of getting a job and advancing to a supervisory position. . . . . Retailers prefer to hire custom tailors, dressmakers and sewers with previous experience in apparel manufacture, design or alternation. Knowledge of fabrics, design and construction is very important.

In addition, although the petitioner provides information on the existence of a professional association of custom clothiers, the association itself provides no information as to degree requirements for the position of custom tailor. Without more compelling evidence, the petitioner has not established that a baccalaureate degree is required for entry into the field of custom tailoring.

With regard to the other three criteria contained in 8 C.F.R. 214.2(h)(4)(iii)(A), the information provided by the petitioner in the appeal with regard to parallel positions within the industry requiring a baccalaureate degree is found insufficient. The job advertisements submitted were for positions with companies such as Nordstrom's and K-Mart. These larger, and more established apparel firms are not similar to the petitioner's business. In addition the fact that the resumes for applicants who applied for the position in question contained some information on their education and vocational training did not establish that the petitioner normally required a bachelor's degree for the position.

Finally the fourth criterion with regard to establishing that the complexity of the job would require a degree was never adequately addressed by the petitioner. The petitioner stressed the ability of the prospective custom tailor employee to relate to the upscale clientele and to supervise future non-degreed employees. Neither

of these job requirements would necessarily establish the complexity or uniqueness factors required for classification as a specialty occupation. Based on the failure to adequately establish any of the four criteria to qualify as a specialty occupation, this petition may not be approved.

Although the petitioner introduces the additional job classification of business and market research analyst in the appeal materials, she provides no further documentation or explanation that the proffered position will contain elements of market research and analysis. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.