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OFFICE OF ADMINISTRATIVE APPEALS
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File: WAC 01 290 55074 Office: CALIFORNIA SERVICE CENTER Date: **DEC 16 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:



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
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is an interior design firm with major business in the interior design of high-end residences and other interior spaces. It employs five persons and claims to have a gross annual income of \$2.1 million. It seeks to temporarily employ the beneficiary as a senior interior designer for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the petitioner established all four criteria contained in the regulations to qualify the proffered position as a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. 1184 (i)(1), 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 proffered position is a specialty occupation.

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.

In the initial petition filing, the petitioner stated that the occupation in question was that of Interior Designer. The duties were listed as "design conceptualization, space planning, drafting, perspective drawing, color and material board preparation, furniture design, detail drawings." In an accompanying letter, the petitioner stated:

[The beneficiary] will be employed as a Senior Interior Designer. His duties and responsibilities include design conceptualization, space planning, drafting, perspective sketches and drawings, color and material board preparation. This also includes furniture designing and detail drawings, specifications and follow up manufacturing aspects of custom made furniture, specification of finishes and provide for soft furnishings and accessories. He will also be involve in fabric selection, clients interview, inspection of job sites, and coordinate with vendors and contractors [sic].

The petitioner also stated that the beneficiary had worked from 1995 to 2000 as a Design Director with TAC Interior Company, in the Philippines, and had performed other design jobs from 1988 to 1995 at both a design consultant and junior designer level.

On September 28, 2001, the Service requested additional information with regard to the beneficiary's job description. A detailed description of the work done including specific job duties, and the percentage of time to be spent on each duty, was requested, among other items. With regard to the position requirements, the petitioner was asked to provide evidence to establish any one of the four regulatory criteria used to determine if the position in question was a specialty occupation. Finally, the Service asked the petitioner to provide evidence that the beneficiary met any one of the four criteria described in the regulations that are used to establish that the beneficiary is qualified to perform services in a specialty occupation. The director also stated that copies of the beneficiary's degree and transcripts had not been received with the original petition.

In response, the petitioner stated that copies of the beneficiary's degree and transcripts had been previously submitted to the Service; however, they would resubmit these documents. The petitioner also submitted an academic evaluation report from Educational Assessment, Inc., in Athens, Georgia dated August 28, 2001. In a cover letter, the petitioner expanded on the job description of the proffered position in the following manner:

[The beneficiary's] duties and responsibilities are as follows: Formulate the design concept of the project, space planning, plans and blue print interpretations, drafting and furniture lay-out, perspective drawing presentation, color and material board preparation, designing custom made furniture, furniture drawings and detailing specifications, fabric selections of material, color scheme and lighting coordination, color rendering services, accessories selection, soft furnishing selection, design presentation to clients, specification sheets preparation, coordination and inspection of custom made furniture, job sites inspection, revisions and dimension detailing, coordination with vendors, finishers and contractors, conduct client interview, translation of data information for proposal, and supervision of projects installation [sic].

No breakdown of times spent on each duty, or types of employees supervised were provided. The petitioner did state the following with regard to the requirement for a college degree in performing the occupation in question:

The duties and responsibilities we require for a senior interior designer is specialized and complex that the knowledge of such responsibilities can be performed only with a degree in interior design. Such knowledge in design conceptualization, space planning, furniture layout, furniture designing, all forms of drafting, color rendering, color scheme, perspective drawing, plans and blue print interpretation, customizing furniture, furniture detailed and specification, can only be learned through a college completion in interior design. The knowledge of such information about the history of arts and architecture is a vital tool in interior design and is also learned in college. A degree in interior design equips a person theoretically, psychologically, even emotionally in interpreting and expressing the different personality and situation of clients. A degree in interior design also develops the skills in drawings and a lot of drafting requirements. To develop a well rounded design also requires the knowledge of the intangibles like the color selection and its effect on a personality. The lighting effect coordination in enhancing a given space. The balance and choice of materials in

accessorizing a room. These description about interior designing is definitely developed over years of study and training and thus only a graduate of interior design and years of experience is capable of performing such duties and responsibilities [sic].

On October 16, 2001, the director denied the petition, basing the decision on the fact that the position offered by the petitioner did not meet any of the criteria for classification as a specialty occupation. He based this determination on the description of Visual Arts and Design Occupations, a general title contained in the Department of Labor's (DOL) Occupational Outlook Handbook, 2000-2001 edition (Handbook). The director further stated that "[w]hile the Handbook states that interior designers normally need a college education, it nowhere indicates that a baccalaureate degree in design is required."

On appeal, counsel asserts that all four criteria to establish the job in question as a specialty occupation were met by the petitioner. In commenting that baccalaureate level training or higher is required for interior designers, counsel utilizes the Handbook classification of Interior Designer. He further states that "Interior Designers normally need a college education, in part because few clients-especially commercial clients- are willing to entrust responsibility for design living and working space to a designer with no formal credentials."

Counsel also submits four Internet job announcements to establish that a college degree is the industry wide standard required for the position of interior designer. He further asserts that the petitioner required all applicants for the position of senior interior designer to possess a baccalaureate degree, and that the duties of a senior interior designer are so complex and specialized that the knowledge required to perform them is usually associated with a baccalaureate degree. In conclusion, counsel asserts that the petitioner requires its interior designers to have more training and education than what the Department of Labor notes are the standard education and training requirements in the interior design industry.

Upon review of the record, and of the Handbook description of interior designer, counsel's comments with regard to the need for a baccalaureate degree in a specific specialty for an interior designer appear to be well-founded. In the most recent edition of the Handbook, the classification of Designers appears to be most appropriate in analyzing the proffered senior interior designer job and whether it qualifies as a specialty occupation. The present edition of the Handbook separates the category Art and Design Occupations from that of Interior Designers. Initial comments on the latter classification at page 120 state that "[c]reativity is crucial in all design occupations; most designers need a bachelor's degree, and candidates with a master's degree hold an advantage." The Handbook at page 122 also indicates that "a bachelor's degree is required for most

entry-level design positions, except for floral design and visual merchandising." Within this context, the director's remark with regard to designers not being required to have a baccalaureate in a specific specialty appears to be incorrect. In addition, both the description provided in the Handbook and the description of the beneficiary's proposed position outline both theoretical and practical applications of highly specialized knowledge within the interior design field. The first criterion contained in the regulations with regard to classification of a position as a specialty occupation, namely, that a baccalaureate or higher degree in a specific specialty or its equivalent is normally seen as the minimum requirement for entry into the particular position, appears to be met.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.