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U.S. Department of Justice  
Immigration and Naturalization Service

**PUBLIC COPY**

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



File: SRC-01-131-61673 Office: Texas Service Center

Date: 18 DEC 2002

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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a jewelry and precious metals business with four employees and a stated gross annual income of just over \$3.32 million. It seeks to employ the beneficiary as a jeweler 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 statement, a separate statement from the petitioner's president, and supporting material.

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 or its equivalent is the standard minimum requirement for the proffered position. On appeal, counsel argues that the offered job requires the theoretical and practical application of a body of highly specialized knowledge, and the performance of its duties is usually associated with the attainment of a baccalaureate degree in the arts. Counsel contends that jewelers trained in India receive education as artists that is not incorporated into training programs for jewelers in the United States.

Counsel's statements on appeal are 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 duties of the offered position were described as follows:

Prepare design, modifying frame and completion of the order design chholkam, ghatkam and other Indian design requested by the customers. Repair to Indian jewelry

including exclusiv[e] matching colors. Indian bangel chholkam.

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 proffered position appears to combine the duties of a jeweler and a precious stone and metal worker. The Department of Labor's Occupational Outlook Handbook, (Handbook), 2002-2003 edition, at pages 552-554, does not list any requirement for a baccalaureate or higher degree in a specific specialty for employment as a jeweler and a 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.

On appeal, the petitioner's president asserts that ten years or more of experience are needed to develop the level of skill required to perform the duties of the offered job. However, the petitioner's president has failed to make any statement that would indicate a specific degree of any type is required for employment in the proffered position. Rather, both counsel and the petitioner's president seemingly place more emphasis on the fact that the position requires extensive experience in manufacturing

and repairing ethnic Indian jewelry. Additionally, a review of the record reveals no evidence that the beneficiary has any formal education, but instead has gained experience and been trained informally by working on the job as a jeweler and a precious stone and metal worker. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

The petitioner has failed to demonstrate that it has, in the past, required the services of individuals with baccalaureate or higher degrees for the offered position.

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.

Counsel's argument that the offered job requires the theoretical and practical application of a body of highly specialized knowledge, and the performance of its duties is usually associated with the attainment of a baccalaureate degree in the arts cannot be accepted. Although institutions of higher learning offer programs that can lead to a bachelor's or master's degree of fine arts in jewelry design, the Handbook reflects that individuals seeking positions as a jeweler and precious stone and metal worker are usually trained in technical or vocational schools, through correspondence courses, or informally on the job.

Additionally, the Service cannot agree with counsel's contention that jewelers trained in India receive education as artists that is not incorporated into training programs for jewelers in the United States. While the cultural and stylistic characteristics of ethnic Indian jewelry are noted, the record does not contain any evidence to demonstrate that the inherent composition and nature of ethnic Indian jewelry radically differs from other jewelry. Furthermore, the petitioner has failed to establish that the beneficiary's duties are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with the cultural and stylistic characteristics of ethnic Indian jewelry or a less extensive education, is necessary for entry into the job offered. Consequently, it cannot be concluded that the petitioner has demonstrated 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.