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U.S. Department of Justice

Immigration and Naturalization Service

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

File: LIN-01-163-50911

Office: Nebraska Service Center

Date: **DEC 27 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 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 multidisciplinary design organization of architects, engineers, planners, facility programmers, interior designers, landscape architects, computer specialists and graphic designers. It has 1,745 employees and a gross annual income of \$340,000,000. It seeks to employ the beneficiary as a senior interior design technician 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 denied the petition because the proffered position appears to be primarily that of an architecture drafter, an occupation that, according to the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), does not require a baccalaureate or higher degree in a specific specialty. On appeal, counsel states, in part, that the proffered position, which requires an individual to engage in sophisticated job duties relating to the conception, creation, and planning phases of the design process for commercial and corporate clients, is so complex that a baccalaureate degree in design-related field is required. Counsel submits an expert opinion in support of her claim. Counsel further states that the proffered position is more similar to that of a designer rather than a drafter, and points out that the DOL in its Handbook finds that most designers need a bachelor's degree. Counsel additionally states that the petitioner normally requires a bachelor's degree in environmental or interior design, architecture, or a related field, for all its senior interior design technicians.

The petitioner's statement 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:

In this capacity, [the beneficiary] will develop, modify and/or review drawings according to established standards and technical expertise. In conjunction with a Senior Interior Designer and Project Manager, [the beneficiary] will work in all phases of the design process. He will develop solutions to technical problems; develop program requirements; prepare preliminary space plans; develop the schematic design; and develop drawings. In addition, [the beneficiary] will prepare color, material, and furniture specifications; prepare construction documents and project manuals; and lead the construction administration efforts.

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 would normally require a bachelor's degree in environmental design or a related field. The record demonstrates that the beneficiary, who is not a licensed designer, will work under the direct supervision of licensed interior designers. As such, the proffered position is similar to that of an assistant designer. In its Handbook, 2002-2003 edition, at page 122, the DOL finds that graduates of 2-year design programs normally qualify as

assistants to designers. 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, although counsel submits a list of 25 employees as evidence that the petitioner has, in the past, required the services of individuals with baccalaureate or higher degrees in a design-related field, for the offered position, such list does not demonstrate that all of the employees hold degrees in a design-related field. It is also noted that two of the employees hold associate degrees. The assertion by the petitioner's human resources manager that the two employees holding associate degrees have the equivalent of baccalaureate degrees because of their employment experience, is noted. The record, however, contains no evidence that at the time such employees were hired, they held the equivalent of a baccalaureate degree in a design-related field. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Third, although the petitioner has submitted various job advertisements, the positions were not for senior interior design technician 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.

Counsel has provided a letter from an industry expert who states, in part, that the usual requirement for positions such as the proffered one is a baccalaureate degree in a design-related field. One letter is insufficient evidence of an industry standard. The writer has not provided any evidence to demonstrate that the usual requirement for positions such as the proffered one is a baccalaureate degree in a design-related field, nor has he indicated the number or percentage of individuals in positions such as the proffered one who hold such degrees.

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.