



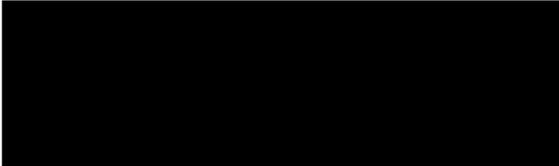
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U.S. Department of Justice

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: SRC-01-011-54563 Office: Texas Service Center

Date: 15 FEB 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, 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 kitchen distributor with 17 employees and a gross annual income of \$14,400,000. It seeks to employ the beneficiary as an architect for interior design products 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 although the proffered position's job title of Architect/Interior Design Projects initially indicated that the proffered position was a specialty occupation, the position does not require a license to practice architecture or interior design in Florida. On appeal, counsel states, in part, that the proffered position is a specialty occupation even though no license is required and submits an expert opinion and letters from industry experts in support of his claim.

Counsel'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:

- (1) design, plan, and research projects for new construction and/or renovation of custom-made interiors;
- (2) plan layout project and integrate elements into design for client review and approval;

(3) utilize computer design capabilities software to allow maximum presentation packages;

(4) monitor the operation of assigned application systems and coordinate corrective actions when necessary; and

(5) supervise and direct activities of employees engaged in the preparation of drawings and layouts.

[The beneficiary] will also draw samples of finished layouts and will present her work to customers, and will prepare notes and instructions for employees who will assemble and prepare the final project. She will review the final layouts and suggest improvements to company staff. She will also prepare illustrations pursuant to clients' instructions and will utilize her skills in order to obtain maximum efficiency.

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 architecture or a related field. The proffered position appears to be that of an interior designer. A review of the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 246-248 finds no requirement of a baccalaureate or higher degree in a specialized area for employment in most areas of design. Some designers hold baccalaureate degrees in design or a related field while others hold certificates or diplomas from two-year and three-

year schools of design. In addition, talent and a good portfolio are often considered as significant as the beneficiary's specific educational background. 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 architecture, for the offered 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.

Counsel has submitted an opinion dated June 13, 2001, from an academic expert. It is noted that the expertise of the academic expert is not in question here. The academic expert states, however, that the beneficiary would perform the proposed duties listed above under the supervision of a licensed architect. In a letter dated June 13, 2001, the petitioner's president states, in part, as follows:

As we explained above, this position does not require a licensed Architect as well an [sic] Architect to be licensed in Florida should work under a licensed Architect for threes [sic] years minimum before be able [sic] to submit him/herself for the license exam. Our job do not requires [sic] licenses although we will commit ourself to contract a licensed Architect to supervise [the beneficiary's] work anytime she needs to develop a job that has this requirement.

The above information from the petitioner's president indicates that the beneficiary would only on occasion be working under the supervision of a licensed architect. This information conflicts with the information provided by the academic expert.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the

record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I&N Dec. 582. (Comm. 1988).

Counsel has also provided three letters from individuals involved in the cabinet industry. The first writer states that an unlicensed person with both design and architectural skills in the cabinet industry would work under his direct supervision and would have no direct client contact. (It is noted that the proposed duties in the instant petition indicate that although the beneficiary would be unlicensed and not working under the full-time supervision of a licensed architect, she would have direct client contact.) The second writer states that it is an industry standard to employ unregistered architects to work as a senior draftsman under a registered architect or interior designer. (It is noted that the proffered position is not that of a senior draftsman nor one that is regularly supervised by a registered architect or interior designer.) The third writer states that it is beneficial for designers to possess both kitchen designer and architectural skills. These three letters are insufficient evidence of an industry standard. In addition, none of the writers have indicated the number or percentage of unlicensed designers 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.