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U.S. Department of Justice

Immigration and Naturalization Service

Administrative Review
prevent clearly unwarranted
invasion of personal privacy

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



File: WAC-02-008-50891

Office: California Service Center

Date: 20 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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a textile dyeing, printing, finishing, and knitting business with 300 employees and a gross annual income of \$27 million. It seeks to employ the beneficiary as a textile engineer 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 concluded that the proffered position appears to combine the duties of a textile machinery operator and a textile designer. The director, therefore, denied the petition because neither of those occupations requires a baccalaureate degree in a specialized area. On appeal, counsel argues that the director erroneously concluded that the proffered position combines the duties of a textile machinery operator and a textile designer. Counsel asserts that the beneficiary will be dealing with chemical analyses of fabrics, not designing or manufacturing the actual fabrics or handling machinery.

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. The petitioner states that it is one of the largest textile dyeing, printing, knitting, and finishing plants in Southern California, having the capability to process a wide range of fabrics such as knits and woven, cotton, polyester, nylon, acetate, acrylic, rayon and their blends such as poly/cotton, nylon/cotton and acetate/rayon, etc. The petitioner states that

the beneficiary will be supervising 75 employees and will be working under the direct supervision of the Plant Manager.

In the initial I-129 petition, the petitioner described the duties of the offered position and the percentage of time spent on each duty as follows:

- * Set up and implement quality control methods compatible with the International Standard Organization (ISO) for knitting, dyeing, and finishing textiles (15% of time);
- * Analyze fabric structure and develop new fabrics (30% of time);
- * Assist with the purchase and set up of textile machinery and equipment for the dyeing and finishing [of] textiles (10% of time)
- * Conduct tests utilizing various textiles testing equipment (30% of time)
- * Write evaluation reports, analyze results and offer corrective measures (15% of time).

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 center director concluded that the proffered position appears to combine the duties of a textile machinery operator and a textile designer. However, upon further review, it is concluded that the duties of the proffered position do not parallel those of a textile machinery operator or a textile designer. There is no parallel to the position of textile engineer in either the Department of Labor's Occupational Outlook Handbook or its O*Net web site (formerly the Dictionary of Occupational Titles.)

On appeal, counsel argues that the holder of the proffered position will be dealing with chemical analyses of fabrics, not with designing or manufacturing the actual fabrics or handling machinery. According to the petitioner, the beneficiary would spend the majority of her time analyzing fabric structure, developing new fabrics, and conducting tests utilizing various textiles testing equipment. However, the petitioner's own advertising publications do not indicate that the petitioner develops fabrics. According to the publication materials, the petitioner only dyes, prints, and finishes fabrics. Therefore, the beneficiary's job duties of developing new fabrics and implementing quality control measures for knitting fabrics do not seem realistic in light of the petitioner's stated business practice.

Neither counsel nor the petitioner has submitted any evidence to show that a bachelor's degree in a specific specialty is normally a minimum requirement for entry into the position. The petitioner has not shown that the industry requires a degree, any professional association in the industry has made a degree a minimum qualification, or that firms routinely employ and recruit only degreed individuals for the proffered position.

In response to a Service request for additional evidence, the petitioner asserted that its two previous "textile engineers" had a bachelor's degree in textile chemistry. In support of this assertion, the petition submitted copies of degrees purportedly belonging to the previous holders of the proffered position, [REDACTED]

[REDACTED] However, no evidence has provided to show that these individuals were previously employed as "textile engineers" by Tissurama.

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.