



D2

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy.

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

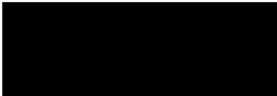


File: EAC 00 039 51776

Office: Vermont Service Center

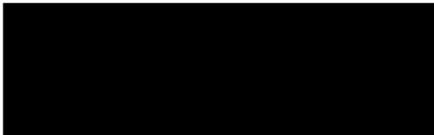
Date: 20 FEB 2002

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, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is an urban streetwear designer and manufacturer with 15 employees and an approximate gross annual income of \$9 million. It seeks to employ the beneficiary as a textile designer -- fashion apparel 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 argued that the proffered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

The Associate Commissioner dismissed the appeal reasoning that the petitioner had not shown that the proffered position is a specialty occupation.

On motion, counsel argues in part that the Department of Labor (DOL) has determined in its Dictionary of Occupational Titles (DOT) that the position of "Cloth Designer", with the alternate titles of "Cloth Pattern Maker," "Pattern Designer," or "Textile Stylist," is a professional occupation which requires a baccalaureate degree in a specialized area, fashion design.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) 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.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Produce original textile designs and illustrations for [the company's] street wear and casual wear lines, taking into account

- urban street design trends and production costs;
2. Direct and coordinate the application of original illustrations and textile designs for various materials and fabrics;
 3. Identify and analyze fashion trends and utilize newly developed textiles and fabrics to develop innovative urban street wear designs;
 4. Attend textile design and fashion show exhibitions for exposure to new textile designs, designers and fashion styles;
 5. Conduct extensive research in computer illustration and textile design techniques and make recommendations to the management for application of unique textile designs for [the company's] streetwear fashions;
 6. Operate and improve textile designs on computer designing systems (CAD) to facilitate the designing process;
 7. Liaise with fabric and garment buyers to discuss quality, workmanship, pricing and transition of designs to fabrics and other materials;
 8. Coordinate and interface with other designers regarding new trends in street wear designs, fabrics and materials used for accessories;
 9. Utilize specialized textile designs and illustrations for [the company's] new line of street wear and urban wear, exploring other fabric and materials to create edgy new designs;
 10. Maintain a new textile design and urban streetwear reference catalog to further Pure Playaz's creative cutting-edge designs and productions for review by potential clients.

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 failed to establish that any of the four factors enumerated above are present in this proceeding.

In these proceedings, the duties of the position are dispositive and not the job title. The position is that of a fashion designer. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 246-247 finds no requirement of a baccalaureate or higher degree in a specialized area for employment in most areas of design. Employers in the field of fashion design typically seek individuals with a two-year or four-year degree who are knowledgeable in the areas of textiles, fabrics, and ornamentation, as well as trends in the fashion world. Creativity is crucial in the field of fashion design. People in this field must have a strong sense of the aesthetic -- an eye for color and detail, a sense of balance and proportion, and an appreciation for beauty. Sketching ability is helpful for most designers, but it is especially important for fashion designers. A good portfolio -- a collection of examples of a person's best work -- is often the deciding factor in getting a job.

Counsel argues on motion that the Department of Labor has determined in its Dictionary of Occupational Titles (DOT) that the position of textile designer -- fashion apparel requires a baccalaureate degree in fashion design. However, a reference in the DOT, standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the DOL in the various editions of its Handbook. The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

Counsel has provided several job advertisements for similar positions. These advertisements indicate a requirement of a baccalaureate degree, but they do not specify that the degree must be in the field of fashion design.

Counsel argues that it was held in Tapis International v. INS, 94 F.Supp.2d 172 (D. Mass. 2000) that a position may qualify as a specialty occupation if it requires a baccalaureate degree or its equivalent. However, in Tapis, the proffered position was that of an interior design showroom manager, an unusual position for which there is no specific degree available. In this case, the duties of the proffered position of textile designer -- fashion apparel fall within the normal range of duties of a fashion designer, a field which does not normally require a baccalaureate degree in fashion design.

Counsel's statement that the petitioner provides cutting edge designs in urban streetwear is noted. However, no evidence has been provided to show that other companies engaged in the production of urban street wear require a Bachelor of Fine Arts degree in Fashion Design for parallel positions.

Counsel argues that the a baccalaureate degree is required for the proffered position because the duties of the proffered position are specialized and complex, as evidenced by the fact that the holder of the proffered position must be proficient in the use of computer programs such as Adobe Illustrator, Photoshop, Corel Draw, and AutoCad. Counsel contends that these software programs are commonly taught in university art programs leading to a bachelor's degree in fashion design. However, these courses are also commonly offered at art schools, schools of design, and community colleges. In view of the foregoing, it is concluded that counsel has not shown that 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.

Finally, the petitioner has not shown that it normally requires a baccalaureate degree in a specialized area for the proffered position. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the proffered 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. Accordingly, the decision of the director will not be disturbed.

ORDER: The decision of the Associate Commissioner dated May 24, 2001, is affirmed.