

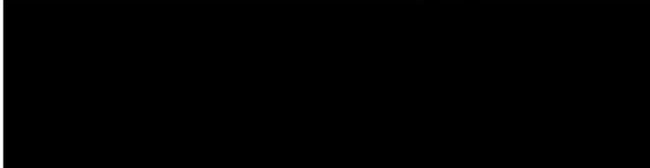


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U.S. Department of Justice
Immigration and Naturalization Service

Public Copy

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



26 JUL 2002

File: WAC-00-062-53398 Office: California Service Center Date:

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:
[Redacted]

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 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. Wemmann
Robert P. Wemmann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California 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 designs and wholesales decorative accessories for the home. It has 20 employees and a gross annual income of \$6 million. It seeks to employ the beneficiary as a junior industrial designer 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 had provided additional information in support of the appeal.

The Associate Commissioner dismissed the appeal reasoning that the proffered position combined the duties of a general manager or executive with those of an accent lighting designer working in a junior capacity, and did not require a baccalaureate degree in a specialized area.

On motion, counsel states, in part, that the proffered position is that of an industrial designer and requires, as a minimum, a bachelor of arts degree. Counsel submits an opinion from an industry expert in support of his claim, as well as job advertisements from design-related businesses. Counsel also submits evidence that one of the petitioner's current industrial designers holds a bachelor's degree. Counsel additionally submits a letter from the petitioner's CEO who provides an expanded description of the proposed duties.

Counsel's statement on motion 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:

[The beneficiary's] duties would include assisting in the design and presentation (in our catalog - see enclosure) of our products; interaction with our manufacturers with regard to specifications and samples; production of necessary drawings and sketches; and assisting with our photography sessions. He would work under the direct supervision of our Director of Design.

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 industrial design or a related field. The proffered position appears to be that of a design assistant. In its Occupational Outlook Handbook, 2002-2003 edition, the Department of Labor finds that graduates of 2-year 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, 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 industrial design, for the offered position. The baccalaureate degree of the petitioner's director of design is noted. The petitioner has not shown, however, that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as industrial design, for its assistant designer positions. Third, although the petitioner submitted various Internet job advertisements, 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.

Counsel has provided a letter from an individual involved in the industrial design industry. He states that the usual requirement for an entry-level/junior industrial design position such as the proffered position is a baccalaureate degree in industrial design. The comments of the writer are noted. The record indicates, however, that the proffered position is that of an assistant designer. The writer has not provided any evidence that an assistant designer would require such 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 decision of the Associate Commissioner dated August 31, 2001, is affirmed.