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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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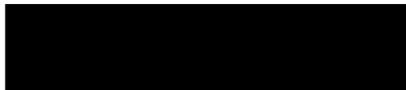
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Office: California Service Center

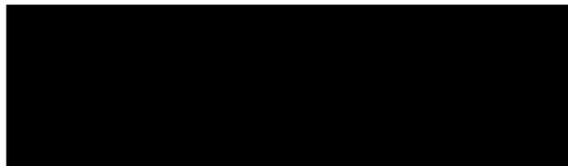
Date: 18 NOV 2002

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 sustained and the petition will be approved.

The petitioner is a property development and management business with 2 employees and an unstated gross annual income. It seeks to employ the beneficiary as an interior designer for a period of five years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a statement and additional documentation.

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 he determined that the offered job did not require a baccalaureate or higher degree for employment. On appeal, counsel argues that the proffered position of interior designer is a specialty occupation requiring a bachelor's degree in a design-related field. Counsel asserts that the Department of Labor's (DOL) Occupational Outlook Handbook, (Handbook), supports this argument.

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 duties of the beneficiary in the proffered position are described in pertinent part by the petitioner's president as follows:

...handling the design and managing the build-out for the company's properties. [The beneficiary] will work directly with me to plan and design renovations to interiors and exteriors of Romulus' properties, single- and multi-family dwellings, as well as commercial. He will prepare cost and design estimates, and select specifications, materials, and color. With his knowledge of design, he will work within my budgetary requirements, client preferences, and use esthetic considerations to create unified concepts for the properties; he will prepare scale drawings and documentation for contractors; he will also use computer-assisted design software and equipment to produce project plans.

The proffered position is that an interior designer. The DOL's Handbook, 2002-2003 edition, at pages 120-123 notes that:

A bachelor's degree is required for most entry-level design positions, except for floral design and visual merchandising. Esthetic ability is important for floral design and visual merchandising, but formal preparation typically is not necessary. Many candidates in industrial design pursue a master's degree to better compete for open positions.

It is noted that not all designer positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the duties are of such complexity as to require a baccalaureate degree in a specific specialty. In view of the foregoing, it is concluded that the petitioner has demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary holds a bachelor of fine arts degree conferred by the American Intercontinental University in Los Angeles, California. Consequently, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position.

It is noted that the petitioner has indicated that it will employ the beneficiary in the offered position for a period of five years. However, pursuant to 8 C.F.R. 214.2(h)(9)(iii)(A)(1), an approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an alien in a specialty occupation shall be valid for a period of up to three years.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's decision is withdrawn and the petition is approved.