



**DA**

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

**NOV 19 2002**

File: WAC-00-032-51271 Office: California Service Center

Date:

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, Acting 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 a Service motion to reopen and reconsider. The motion is granted. The previous decisions of the director and Associate Commissioner will be withdrawn and the appeal will be sustained.

The petitioner is a textile printing, coating and dyeing business with 50 employees and a projected gross annual income of \$500,000. It seeks to employ the beneficiary as a 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 petitioner had not sufficiently demonstrated that the proffered position would normally require a bachelor's degree in fine arts or a related field.

On motion, counsel states, in part, that virtually all of the petitioner's competitors hire individuals who hold a bachelor's degree in design for their textile designer positions. Counsel further states that the beneficiary will be supervising three design technicians who all hold a bachelor's degree in the field of design or fine art. Counsel additionally states that even though the Department of Labor (DOL) in its Occupational Outlook Handbook (Handbook) does not specifically discuss the field of textile design, it cannot be implied that such degree is not a requirement.

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.

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

This is the person who creates the design that will eventually appear on the fabric...

The textile designer supervises the work of the CAD technicians who prepare the designs on the computer, which, in turn, generates the printing plates, used on the printing machines. The textile designer will also consult with the printing technicians in selecting the correct dyes, pressures, and order of printing. During the printing process, she will perform quality control checks of the finished products to ensure they meet the company specifications and give instructions, if any, for necessary corrections or changes in the printing process.

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 proffered position is that of a textile designer. A review of the Handbook, 2002-2003 edition, at page 122, finds that a bachelor's degree is required for most entry-level design positions, except for floral design and visual merchandising. Graduates of 2-year programs normally qualify as assistants to designers.

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 specialized and related area. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of 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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The decisions of the director and Associate Commissioner are withdrawn and the petition is approved.