



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

[Redacted]

File: EAC-01-085-52465 Office: Vermont Service Center

Date: OCT 18 2002

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]

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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a fashion and design clothing manufacturer with 30 employees and gross annual income of \$50 million. It seeks to employ the beneficiary as a fashion designer for a period of three years. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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 the petitioner had not demonstrated that the specific nature of the duties that the beneficiary will perform qualify at the H-1B level or that the petitioner routinely requires a baccalaureate degree in fashion design as a prerequisite for the job offered.

On appeal, counsel asserts that the Service has recognized the occupation of fashion design as a specialty occupation in that the Service has previously approved other H-1B visa petitions for fashion design positions, including a petition filed by the petitioner on behalf of another individual.

The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The Service considers 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 person whom we employ for this position will have full and overall responsibility for handling all aspects of design projects and illustrations of graphics for print and output. This employee will assist with the coordination of the promotion of all segments of employer's in house design work. Responsible for development of sales & promotional planning, in addition to advertising & exhibitions. This employee will advise on publicity & display of merchandise, coordinate samples for presentations abroad. Promote new fashions, conduct promotional activities such as fashion shows to induce customer acceptance in international markets. This employee will be responsible for researching new fashion trends abroad and in the United States. Prepare line lists for each season. Make sample requests for presentation. Prepare press kits for marketing and track fabric cut information.

This employee will design details while coordinating with license designers. The fashion designer will assist other designers and communicate between the head office and other departments to help them exchange ideas in fashion designing. This employee will provide all contact with clients overseas, explain garment product features and quality of garments. . . .

Most importantly [sic] is the ability to integrate cost components into the equation so that finished garments can be produced cost effectively. In addition, this employee will create these designs by using professional equipment and graphical applications through computer graphic software such as Macintosh environment and QuarkXpress/Adobe Photoshop/Adobe Illustrator, etc.

At [REDACTED] Inc. our fashion designers are also responsible for organizing and designing presentation boards and color boards for display at fashion shows, meetings, and showrooms to promote upcoming fashion styles for men's fashions and sportswear.

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 fashion designer. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at page 122 finds that a bachelor's degree is required for most entry-level fashion design positions. In view of the foregoing, it is concluded that the proffered position of fashion designer 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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

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