

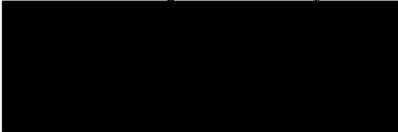


DA

U.S. Department of Justice
Immigration and Naturalization Service

**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-01-260-54208 Office: Vermont Service Center

Date: **OCT 31 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
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 matter will be remanded for further consideration and action.

The petitioner is a clothing manufacturer with three employees and a gross annual income of \$2,611,003. 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 a bachelor's degree in fashion design is a minimum requirement for entry into the occupation or that the degree requirement is an industry standard in parallel positions among similar organizations.

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. Counsel further asserts that the petitioner has previously submitted sufficient documentation to show that the degree requirement is an industry standard in parallel positions among similar organizations.

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

Identifying customer's needs for various women's, men's, and children's clothing. Researching new fashion trends in Asia, Europe, and USA. Communicating with fabric and trimming markets, as well as manufacturers. Determining market prices in the United States and abroad. Choosing and deciding on upcoming projects that require market research. Organize and develop samples, presentations and color boards for meetings with buyers in order to promote upcoming trends for the company's products. Apply feedback received to develop product lines and executive product lines for the company.

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 director has not determined whether the beneficiary qualifies to perform services in a specialty occupation. It is noted that the beneficiary was awarded a bachelor of home economics degree from Chung-Ang University in Korea. She was subsequently awarded an Associate in Applied Sciences degree from the Fashion Institute of Technology, State University of New York. It is further noted that the record does not contain evidence to show that the beneficiary's foreign education and associate's degree are equivalent to a bachelor's degree in fashion design from a regionally accredited college or university in the United States. Accordingly, the matter will be remanded to the director to make such determinations and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further consideration and action consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.

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