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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
BCIS, AAO, 20 MASS, 3/F
Washington, DC 20536



AUG 18 2003

File: LIN 02 106 53270 Office: NEBRASKA 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)

ON BEHALF OF PETITIONER:



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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an Aspen, Colorado manufacturer and retailer of jewelry. It has 10 employees and a gross annual income of \$2,300,000. It seeks to temporarily employ the beneficiary as a production manager for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation. The director found that the job duties described would attach to a supervisory jeweler position, which does not require a four-year degree, rather than production manager.

On appeal, counsel asserts that the position of jewelry production manager is a specialty occupation, because it requires complex knowledge and skills beyond those of a jeweler. The Bureau notes that, although counsel indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days of filing the appeal, as of this date, the record does not contain any additional evidence. Therefore, the record is considered complete, and the AAO shall render a decision based upon the evidence before it at the present time.

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.

The term "specialty occupation" is defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the Nebraska Service Center on February 8, 2002, the petitioner described the duties of the proffered position as follows:

- Oversee the design and production of jewelry by jewelers and produce jewelry herself
- Manage the finances and purchasing of supplies for the store
- Hire and train all of the jewelers and other employees of the store
- Keep quality control of the jewelry that is designed, manufactured, and repaired in the store

On February 11, 2002, the director asked for further information with regard to whether the proffered position was a specialty occupation and whether the beneficiary would be qualified for such a position. In response, the petitioner submitted a statement by the attorney of record, along with several documents, including a letter from the Gemological Institute of America (GIA), employment advertisements from Monster.com, and information about the beneficiary's university degree. The petitioner also submitted an excerpt from the DOL *Occupational Outlook Handbook (Handbook)* on industrial production managers, to which it compares the proffered position.

The letter from the GIA, written by a product manager in the jewelry manufacturing arts with the GIA, states that a jewelry production manager must generally have a bachelor's degree and/or an equivalent combination of education and specialized training/experience in the field, and that this is a typical industry requirement. The advertisements from Monster.com are for various types of managers, production managers, and program managers, but no jewelry production managers. The beneficiary's

documentation shows that she possesses a Bachelor of Fine Arts degree with a specialization in jewelry design.

On May 13, 2002, the director denied the petition. The director found that the evidence submitted did not establish that the proffered position is a specialty occupation. The director noted that counsel's statement outlining why the position should be considered a specialty occupation establishes, in essence, that the proffered position is more akin to a supervisory jeweler with some managerial duties. He also pointed out that letters of support, such as that of the GIA, are advisory only and not binding on the Bureau. The director recognized the beneficiary's qualifications to be equivalent to a bachelor's degree, but found the job advertisements to be inconclusive, as they provided no information by which to compare them to the proffered position.

On appeal, counsel asserts that the proffered position is more than just a supervisory jeweler with managerial duties, but also includes responsibility for the quality control of the products manufactured. Counsel submits that the position thus requires complex knowledge and skills beyond those normally associated with jewelers and so should be considered a specialty occupation.

The Bureau of Citizenship and Immigration Services (Bureau) often looks to the *Handbook* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. The petitioner has proposed the *Handbook* job title of industrial production manager for the proffered position. With regard to training and experience for industrial production managers, the *Handbook* on page 65 indicates that there is no specific educational specialty required for this position, as individuals with business degrees as well as degrees in liberal arts may be hired as production managers. Bureau regulations at 8 C.F.R. § 214.2(h)(4)(ii) describe specialty occupations as those which require the attainment of a bachelor's degree or higher in a *specific specialty* (emphasis added), or its equivalent, as a minimum for entry into the occupation in the United States. It does not appear that an individual needs a degree in a specific specialty in order to obtain employment as a production manager.

The *Handbook* on page 64 states that the primary mission of industrial production managers is planning the production schedule within budgetary limitations and time constraints. The *Handbook* portrays a position whose incumbent is responsible for coordinating a broad array of managerial functions including procurement, sales, logistics, quality assurance, and production sequencing, but who is not normally involved in the actual production itself. The petitioner in the case at hand does not clarify how much time the beneficiary would spend on any managerial functions, and how much time would be dedicated to the design and actual manufacture of the products. As pointed out by the director, the proffered position appears to be that of a supervisory jeweler rather than a production manager.

Although neither the petitioner nor the director proposed the job title of designer to describe the proffered position, designer might well be the most correct title. The *Handbook* at page 120 states that designers combine practical knowledge with artistic ability to turn abstract ideas into formal designs for a variety of products, including fashion accessories such as jewelry. This might describe the beneficiary's position; however, the job description does not include a breakdown of responsibilities which would facilitate making such a determination.

In evaluating the proffered position as a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1)

As discussed above, the job description provided does not allow for an accurate determination of the major focus of the proffered position. As described, it does not appear to be that of an industrial production manager, but rather closer to a supervisory jeweler. In the 2002-2003 edition of the *Handbook* at page 553, the *Handbook* states that jewelers usually learn their trade in vocational schools, through correspondence schools, or on the job. To the extent that the *Handbook* does not indicate that employers of jewelers require a bachelor's degree for entry into the proffered position, it does not appear that a bachelor's degree is the minimum requirement for entry into the jewelry field.

II. 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 - 8 C.F.R. § 214.1(h)(4)(iii)(A)(2)

A. Degree Requirement is Common to the Industry

Factors often considered by the Bureau when determining the industry standard include: whether the Department of Labor's (DOL) *Occupation Outlook Handbook* (*Handbook*) reports that the industry requires a degree, whether the industry's professional association has made a degree a minimum entry requirement, and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for a jeweler position were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry

standard, the petitioner submitted a letter from the Gemological Institute of America, which states that jewelry manufacturing firms typically require individuals with a bachelor's degree and/or an equivalent combination of training and experience to fill the position of jewelry production manager. It was noted above that this job title does not appear to apply to the instant job duties. The petitioner provided no documentation regarding the educational requirements for the position of supervisory or lead jeweler. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, the petitioner has submitted no documentation that the position of a supervisory jeweler would involve duties seen as either unique or complex that only an individual with a degree in a specific specialty could perform them.

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h)(4)(iii)(A)(3)

The petitioner has submitted no information with regard to other employees with similar duties and their academic credentials. There is no information that the petitioner has hired individuals in the proffered position previously.

IV. 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 - 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)

To date the petitioner has placed no information on the record with regard to the specialized and complex nature of the proffered position at Chepita of Aspen. The job description in the original petition contains work duties that are similar to those of a supervisory jeweler position. Without more persuasive evidence as to the specialized or complex nature of the proffered position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that any of the four criteria 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.