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

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, DC 20536

[Redacted]

File: WAC 01 030 50025 Office: CALIFORNIA SERVICE CENTER Date: AUG 22 2003

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)

ON BEHALF OF PETITIONER:

[Redacted]

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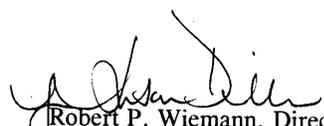
INSTRUCTIONS:

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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a California architectural design and construction company established in 1980. It has six employees and a gross annual income of \$1,520,000. It seeks to temporarily employ the beneficiary as an interior designer for a period of three years. The director determined that the proffered position was not a specialty occupation.

On appeal, counsel asserts that the proffered position is a specialty occupation and that the Bureau misinterpreted a letter submitted by the petitioner and also erred in relying on the Department of Labor's (DOL) *Occupational Outlook Handbook* (Handbook) for its specialty occupation analysis.

Section 214(i)(1) of the Immigration and Nationality Act (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 further 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 first 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 California Service Center on October 31, 2000, the petitioner provided the following list of job duties for the interior designer position:

- 1) Assist clients in determining their preferences, tastes, and budgets;
- 2) Prepare detailed plans for clients showing the arrangement of walls, dividers, lighting, and other fixtures;
- 3) Develop decorating plans and advise on color schemes, floor and wall covering, etc;
- 4) Estimate cost of the project and material;
- 5) Prepare specification for the final interior design; [and]
- 6) Finishing [sic] final blueprints and submission for City review.

The petitioner added that the usual minimum requirement for the performance of these job duties was a college degree in interior design, architectural design, or related field, plus one-year experience in a related area.

On April 16, 2001, the director asked for further information with regard to whether the proffered position was a specialty occupation. In particular, the director requested a certified Labor Condition Application (LCA), and a detailed statement on the beneficiary's proposed duties and responsibilities, the percentage of time that the beneficiary would spend performing the specific duties each day, level of responsibility, hours per week of work, types of employees supervised, and the minimum education, training, and experience necessary to do the job. The director also requested the petitioner provide more evidence to establish any of the four criteria of 8 C.F.R. § 214.2 (h) (4) (iii) (A).

In response, the petitioner submitted a certified LCA and then reiterated the same job duties for the proffered position. It added that the beneficiary would be involved with "communicating with Asian clients and help [sic] satisfy clients' needs." The petitioner also added that, while its position of interior designer belonged to the category of specialty occupations, "the

performance of the job itself did not necessarily require a bachelor's degree, which is common to the industry. A person with a certain years [sic] of professional training or related experience would qualify as a candidate." The petitioner submitted no other documentary evidence for the record.

On January 23, 2002, the director denied the petition. The director noted that the petitioner had submitted no further evidence to establish any of the criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A). In addition, the director cited excerpts from the 2000-2001 edition of the DOL *Handbook* with regard to the training of interior designers. Based on this information, the director stated that the proffered position did not require baccalaureate training as a normal requirement for entry into the occupation.

On appeal, counsel states that the Bureau erred in its finding that the position of interior designer was not a specialty occupation, and also misinterpreted the petitioner's statement with regard to a bachelor's degree not being necessary to perform the job. Counsel asserts that the petitioner was only reiterating that the position of interior designer requires an individual with a bachelor's degree, or its equivalent. In addition, counsel states that the Bureau erred in relying on the DOL *Handbook* as an authoritative source of information in determining that the position of interior designer does not qualify as a specialty occupation. Counsel states that the Department of Labor's *Occupational Employment Statistics (OES)* directory classifies the position of interior designer as a Job Zone 4, which requires considerable preparation, and a four-year bachelor's degree for most positions. Counsel submits no documentation to further support any of his assertions.

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation.

The Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. With regard to publications such as the *OES* or the Department of Labor's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991), the Department of Labor has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation.

The 2002-03 edition of the *Handbook* separates the category Art and Design Occupations from that of Interior Designers. Initial comments on the latter classification at page 120 state that "[c]reativity is crucial in all design occupations; most designers need a bachelor's degree, and candidates with a

master's degree hold an advantage." The *Handbook* at page 122 also states: "a bachelor's degree is required for most entry-level design positions, except for floral design and visual merchandising." This *Handbook* excerpt supports the supposition that a bachelor's degree in a specific specialty is the minimum educational level normally required for entry into an interior design position.

Nevertheless, the record does not establish clearly that the proffered position in the instant petition is an interior designer position as outlined in the *Handbook*. The critical element in examining whether the proffered position is a specialty occupation is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

In the initial petition, the petitioner stated the beneficiary had worked with the petitioner during her practical training phase of her academic studies. The petitioner also listed various job duties, and emphasized the beneficiary's outstanding drafting skills, extensive knowledge of interior design and architectural design, her bilingual skills, and communication ability. However, the record is devoid as to how much time the beneficiary spends in these respective skill groups, the level of authority at which the beneficiary would work, or her professional standing with regard to any other interior designers employed by the petitioner. Although the petitioner was provided the opportunity to provide such testimony, it did not provide any such additional documentation. Without more specific testimony, the evidence in the record is insufficient to establish whether the proffered position in the instant petition is that of a specialty occupation. While the beneficiary may have adequate educational preparation and training to perform the duties of the job as described in the instant petition, the petitioner has not established that the position in the instant petition is a specialty occupation.

Beyond the decision of the director, the record is not sufficiently developed that the beneficiary is qualified to perform the duties of the proffered position. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(1), to qualify to perform services in a specialty occupation, the alien must hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

Evidence submitted to the record establishes that the beneficiary attended a three-year academic program at Santa Monica College in California and received an associate of arts degree in interior design. As such the beneficiary does not have a baccalaureate degree. Although the petitioner submitted transcripts from Mercer University in Georgia, the petitioner provided no explanation or

documentation as to how these additional courses, the beneficiary's practical training in interior design with the petitioner, or any other work or training would constitute the equivalent of a baccalaureate degree in a specific specialty.

In addition, the petitioner has not established that the beneficiary has the necessary interior designer certification to perform an interior designer position. The American Society of Interior Designers identifies the State of California as one of the 23 jurisdictions in the United States (including the District of Columbia and Puerto Rico) that have a registration, certification or licensing requirement for interior designers. According to the California Business and Professional Code, Chapter 3.9 Section 5800-5812, Interior Designers, interior designers can be certified if they possess the following education and experience: a graduate of a four or five-year accredited interior design degree program, who has two years of diversified interior design experience; and a graduate of a three-year accredited interior design certificate program who has completed three years of diversified interior design experience. Available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=05001-06000&file=5800-5812> (as of July 11, 2003). Without more persuasive testimony, the petitioner has not established that the beneficiary is qualified to perform the duties of an interior designer. As the appeal will be dismissed on other grounds, this issue need not be examined further.

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.