

D2

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

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

[REDACTED] COPY

File: EAC 01 221-53550 Office: VERMONT SERVICE CENTER Date: MAR 11 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)

IN BEHALF OF PETITIONER:  
[REDACTED]

**identifying info deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

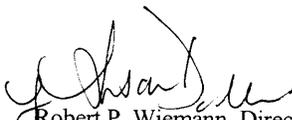
INSTRUCTIONS:

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

The petitioner is a New York jewelry company established in 1992 that has 13 employees and a gross annual income of \$1,523,345. It seeks to temporarily employ the beneficiary as an industrial designer for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the position of industrial designer is a specialty occupation and that the Bureau is using inappropriate criteria to deny the petition.

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 position offered to the beneficiary is a specialty occupation. In the original petition received by the Vermont Service Center on July 11, 2001, the petitioner stated that the beneficiary would work as an industrial designer on a part-time basis for the petitioner. The petitioner described the beneficiary's duties as follows:

Prepare working drawings from sketches and design specifications; develop ideas to enable us to design desired form of diamond jewelry products as per the customer's specifications, etc.

In a cover letter, the petitioner expanded on the duties of the proffered position as follows:

The position involves developing ideas to enable it to design different forms of diamond jewelry products as per clients' specifications with the help of computers; prepare and coordinate preparation of working drawings from sketches and design specifications with the use of computers. [The beneficiary] will attend showings and consult with marketing, production, and sales representatives to establish design concepts; evaluate design ideas based on factors such as design-function relationships, materials, budget, production costs, and market characteristics. [The beneficiary] will design product packaging and graphics for advertisements and brochures, design products for custom applications using its knowledge of design trends, competitors' products, production costs, production capability, and characteristics of a company's market to create diamond jewelry products.

The petitioner also submitted an educational equivalency document that indicated the beneficiary's educational work in Moldova was the equivalent of a U.S. bachelor of science degree in architecture. The petitioner also submitted the beneficiary's college transcripts and described the beneficiary's work experience.

On August 20, 2001, the director asked for further information with regard to whether the proffered position was a specialty occupation. The director requested a detailed statement articulating the beneficiary's proposed duties and the percentage

of time the beneficiary would spend performing these functions. The director also requested that the petitioner submit documentary evidence showing that within the petitioner's company and industry, a bachelor's degree in a specific field of study is a standard minimum requirement for the proffered position. The director requested that any information submitted to address this issue involve companies of comparable size, distinction, and function. Finally, the director requested information on how many other individuals were currently employed in the proffered position, or in similar positions. Of these individuals, the director wanted to know how many had obtained a bachelor's degree and in what field of study. The director also noted that the Labor Condition Application (LCA) submitted with the instant petition had not been certified and requested a certified LCA form from the petitioner.

In response, the petitioner submitted a certified LCA, an excerpt from the Department of Labor's (DOL) *Occupational Outlook Handbook* on designers, and a description of the field of industrial design from a website of the Industrial Designers Society of America. The petitioner also provided the following breakdown of the beneficiary's prospective duties:

- Develop new and innovative ideas to create new diamond jewelry designs and diamond shapes with the help of computers. Work one on one with the individual and corporate customers in achieving the above task. (60%)
- Evaluate design ideas based on factors such as design-function relationships, materials, budget, production costs, and market characteristics. (20%)
- Prepare and coordinate preparation of working drawing from computerized sketches and work with our jewelry manufacturer and jewelry caster to create these pieces of jewelry. (10%)
- Attend showings and consult with marketing, production, and sales representatives to establish new design concepts. (5%)
- Design product packaging and graphics for advertisements and brochures, design trends, competitors' products, production costs, production capability, and characteristics of a company's market to create various diamond jewelry product. (5%)

The petitioner also stated:

The current market and our ability to remain the largest resource of GIA certified diamonds and diamond jeweler distributors/retailers forces us to become more technologically equipped. Our company's ability to present our products in a visual form with the use of new technology and our ability to act in the most efficient way will enable us to stay competitive in today's market, make our day-to-day lives more comfortable and efficient. The industrial designer will look for innovative and better ways to create different jewelry designs and diamond shapes by exploring a broad range of alternatives through drawings and models, steadily refining their designs as they are tested against the customers' desires.

The petitioner also stated the following:

[t]he complexity of the task outlined above demanded an individual to possess a minimum of bachelor level education. In addition a thorough understanding of the physical science, engineering principles, industrial materials and processes are necessary for performance of this specialty occupation.

Finally, the petitioner stated that it did not currently employ a staff industrial designer and that the position was created due to the petitioner's current expansion and modernization of the business.

On February 4, 2002, the director denied the petition stating that the petitioner's evidence failed to establish that it employed other individuals who possessed baccalaureate degrees in similar positions. The director determined that the excerpts from the *Handbook* submitted by the petitioner were insufficient as the documentation did not indicate that "a bachelor's degree is required". The director noted that the *Handbook* also provided that educational levels vary for the position, and interpreted this to mean that an industrial designer was not necessarily a specialty occupation. Finally the director stated that "as you are a small, relatively new company, which specializes in jewelry design, it does not appear that the nature of your business is such that it requires the services of a professional industrial designer."

On appeal, counsel asserts that the petitioner submitted sufficient documentation to establish that the position of industrial designer is a specialty occupation. Counsel also states that the Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau) inappropriately placed great weight on its determination that the petitioner was a relatively new, small company, and that the petitioner had not submitted the requested information on individuals employed by the petitioner in similar positions. Counsel also maintains that the Bureau's interpretation of the *Handbook* and the Industrial Designers Society of America's

information on industrial designers was erroneous. According to counsel, both sources of information clearly establish that the position of industrial designer normally requires a baccalaureate degree.

Upon review of the record, it appears that the director's remarks with regard to the size of the petitioner and the absence of evidence regarding previous hiring practices are not necessarily relevant to the present proceedings. *Young China Daily v. Chappell*, 742 F.Supp. 552 (N.D. Cal 1989). In addition, the director's remarks with regard to the petitioner being relatively new appear to be erroneous. As counsel noted in the original petition, the petitioner has been established since 1992. The company brochures also indicates the diamond selling business has existed for two decades. Such facts would not be considered in establishing whether the proffered position is a specialty occupation.

The Bureau 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 industrial designers, the 2002-2003 edition of the *Handbook* states the following on page 120:

Commercial and industrial designers, including designers of commercial products and equipment, develop countless manufactured products, including airplanes, cars; children's toys; computer equipment; furniture; home appliances; and medical, office and recreational equipment. They combine artistic talent with research on product use, customer needs, marketing materials, and production methods to create the most functional and appealing design that will be competitive with others in the marketplace. Industrial designers typically concentrate in an area of sub-specialization such as kitchen appliances, auto interiors, or plastic-holding machinery.

With regard to employment, and training of industrial engineers, the *Handbook* states the following on page 122:

Most industrial designers, for example, work for engineering or architectural consulting firms or for large corporations. . . . A bachelor's degree is required for most entry-level design positions, except for floral design and visual merchandising. . . . Many candidates in industrial design pursue a master's degree to better compete for open positions.

It is very clear from the *Handbook* excerpts that an industrial designer position requires a baccalaureate in either industrial design or a closely related area. The information provided on the

Industrial Designers Society of America website also provides clear testimony with its description of the work and its following statement: "[p]reparation for practicing industrial design requires a baccalaureate degree in that field."

What is less clear from the materials on the record is why the petitioner chose to categorize the proffered position as an industrial designer position. The description of the proffered position appears more analogous to the *Handbook* classification of jewelers and precious stone and metal workers. For example, on page 552 of the *Handbook*, the following duties of a jeweler are described:

Although the quality of a piece of jewelry is the direct reflection of a particular jeweler's skills and many procedures have been performed the same way for hundreds of years, new technology is helping to produce higher quality pieces of jewelry at a reduced cost and in a shorter amount of time. A growing number of jewelers use lasers for cutting and improving the quality of stones, intricate engraving or design work, and identification (ID) inscription. . . . Some manufacturing firms use computer-aided design and manufacturing (CAD/CAM) to facilitate product design and automate some steps in the mold- and model-making process. CAD allows a jeweler to create a virtual reality model of a piece of jewelry, modify the design, and find mistakes, all on the computer screen.

With regard to the training or other qualifications of jewelers and precious stone workers, the *Handbook* on page 552 states the following:

Jewelers usually learn their trade in vocational or technical schools through correspondence courses, or on the job. Colleges and arts and design schools also offer programs that can lead to a bachelor's or master's degree of fine arts in jewelry design. Formal training in the basic skills of the trade enhances one's employment and advancement opportunities.

This classification indicates no requirement of a baccalaureate degree in a specific specialty.

In examining these *Handbook* classifications, it should be noted that 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 instant petition, the duties of the proffered position

outlined by the petitioner with regard to computer-assisted design and efficiency of design and manufacture of jewelry appear more appropriately categorized as the newly advanced technological work of jewelers. The industrial designer occupation as described by the Industrial Designers Society of America identifies industrial designers as working in areas such as "transportation design, medical products, consumer electronics, special effects for the entertainment industry, computer animation, furniture design, and environmental design including building interiors and signs." It is not clear from the record why the petitioner considers the proffered position to be an industrial designer position. Without more persuasive evidence, the petitioner has not established that the proffered position is an industrial designer. Thus, the petitioner has also not established that the proffered position is a specialty occupation.

With regard to the second and third criteria outlined in 8 C.F.R. § 214.2 (H)(4)(iii)(A), namely that the degree requirement is common to the industry in parallel positions, and that the employer normally requires a degree or its equivalent for the proffered position, the petitioner has not established either of these criterion. As stated previously, the proffered position does not appear to be that of an industrial designer. Although the petitioner submitted documentation from the Industrial Designers Society of America that indicated that a bachelor degree in industrial design is a required credential for industrial designers, this information is not deemed material to establishing the industry standard for the proffered position. With regard to the criterion that the petitioner normally required a degree in a specific specialty for the proffered position, the petitioner clearly established that the proffered position is a new position and that no other employees are similarly employed.

With regard to the final criterion, namely that 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, as previously stated in this proceeding, the proffered position appears more analogous to a jeweler position that combines elements of aesthetic design with computer-assisted design and technology. There is no documentation on the record as to why the proffered position would be considered more specialized or complex than any other similar jeweler position. Without more persuasive evidence, the petitioner has not established the specialized and complex nature of the duties to be performed by the beneficiary.

Beyond the decision of the director, it is noted that the petitioner provided documentation with regard to the beneficiary's university degree being the equivalent of a United States baccalaureate degree in architecture. While the petitioner has provided some information with regard to the beneficiary's work experience as an industrial designer, there is no documentation on the record with regard to whether the combination of the

beneficiary's educational and work experiences would be the equivalent of a United States bachelor degree in industrial design. 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5). Without such documentation, it has not been established that the beneficiary is qualified to perform the duties of the position identified by the petitioner as an industrial designer. There is no information on the record to either the beneficiary's educational or work experience in the jewelry design or manufacturing field. As the appeal will be dismissed on others 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.

**ORDER:** The appeal is dismissed.