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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

File: WAC-01-265-52979

Office: CALIFORNIA SERVICE CENTER

Date: MAY 12 2003

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:



**PUBLIC COPY**

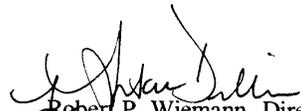
INSTRUCTIONS:

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 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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a jewelry manufacturing business with 12 employees and a gross annual income of \$1.2 million. It seeks to employ the beneficiary as an industrial designer for an approximate period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the proffered position is primarily that of a jewelry and precious stone and metal worker, an occupation that does not require a baccalaureate degree, rather than an industrial designer. On appeal, counsel states, in part, that the petitioner is not a retail base, but a jewelry manufacturer, and, therefore, is in need of an industrial designer. Counsel further states that the proposed duties of research, design, consultation, study of literature, evaluation of budgetary constraints and marketing characteristics are those of an industrial designer.

Counsel's statement on appeal is not persuasive. The Bureau does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Design, develop, and fabricate jewelry using modern 3D modeling software for large volume production to customized pieces. Develop designs to be engraved on jewelry and sketch the design locating the reference points using 3D Studio Max, Rhinoceros, and Auto-Cad. Operate and maintain the high precision rapid prototyping machine, which is used to transfer such 3D images into thermoplastic 3D models, later used for casting. Evaluate designs based on factors such as appearance, budget, production costs and client specification. Present alternate design formats for modification and selection.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Bureau does not agree with counsel's assertion that the beneficiary is an industrial designer, an occupation that would normally require a bachelor's degree in industrial design or a related field. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at pages 120-121, the DOL describes the jobs of commercial and industrial designers as follows:

*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 the area of sub-specialization such as kitchen appliances, auto interiors, or plastic-molding machinery.*

The record reflects that the petitioner, which is a jewelry manufacturing business, employs 12 persons and has a gross annual income of \$1.2 million. The business in which the beneficiary is to be employed does not require the services of an industrial designer who typically concentrates in the area of sub-specialization such as kitchen appliances, auto interiors, or plastic-molding machinery.

The proffered position appears to combine the duties of a jeweler and precious stone and metal worker with those of a marketing manager. In its Handbook, the DOL describes the position of a jeweler and precious stone and metal worker, in part, as follows:

*Jewelers use a variety of common and specialized handtools to design and manufacture new pieces of jewelry; cut, set, and polish stones . . . Jewelers usually specialize in one or more of these areas, and may work for large jewelry manufacturing firms or small retail jewelry shops . . . .*

A review of the DOL's *Handbook* at page 553 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a jeweler and precious stone and metal worker. Although colleges and art and design schools offer programs that

can lead to a bachelor's or master's degree of fine arts in jewelry design, jewelers usually learn their trade in technical or vocational schools, through correspondence courses, or informally on the job. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background.

A review of the DOL's *Handbook*, at page 28 also finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in marketing managerial jobs. A wide range of educational backgrounds is suitable, but many employers prefer those with experience in related occupations plus a broad liberal arts background. In addition, most marketing management positions are filled by promoting experienced staff or related professional or technical personnel.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as fine arts, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors 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.

**ORDER:** The appeal is dismissed.