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

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



File: EAC 02 099 53400 Office: VERMONT SERVICE CENTER Date:

OCT 17 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:



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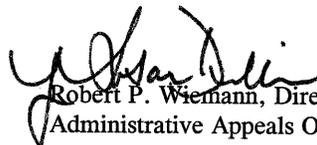
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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 Boston-area fashion design company with nine employees and a gross annual income of \$250,000. It seeks to employ the beneficiary as a fashion consultant 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, the petitioner asserts that a fashion consultant is a specialty occupation.

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 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 Vermont Service Center on January 31, 2002, the petitioner described the duties of the proffered position as follows:

- Researching fashion trends to assist in determination of clothing lines to be manufactured by the company;
- Gathering data on competitors and analyzing process, sales, and methods of marketing and distribution;
- Developing product images in accordance to [sic] future marketing trends. Preparing reports and graphic illustrations of findings when necessary;
- Checking on manufacturing quality control and quality of sales;
- Meeting clients for initial discussions of orders and for preparation of patterns and conceptualizing patterns of various client groups;
- Preparing profit/loss analysis for quarterly meetings and assisting in preparation of proposals based on market research trends; [and]
- Reviewing tailoring process; verifying final products and undertaking duties related to the functioning of the fashion couture.

On February 11, 2002, the director asked for further information with regard to whether the proffered position is a specialty occupation and how the beneficiary is qualified to perform such. The petitioner's response was unpersuasive; thus on April 17, 2002, the director denied the petition. The director noted that the duties of the proffered position are comparable to those of marketing managers and fashion

designers, as described in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* 2000-2001 edition. According to the *Handbook*, a bachelor's degree is not the minimum entry requirement for either of these fields.

On appeal, counsel submits a brief in which she contends that the proffered position's duties are similar to those of a market analyst, which requires a minimum of a bachelor's degree. According to the *Handbook* 2002-2003 edition at page 239, market research analysts focus on the gathering, compilation, and analysis of statistical data concerned with the potential sales of a product or service. While the proffered position includes the gathering of data on competitors and the analysis of marketing methods and distribution, these duties appear to be incidental to the principal activities surrounding the design and creation of custom high fashion attire. The petitioner states that the proposed duties include "assisting in preparation of proposals based on market research trends," indicating that the beneficiary does not perform market research, but rather utilizes the results of the research in the development of the product.

Many of the duties of the proffered position indeed appear to be similar to those of a marketing manager, as described in the *Handbook* at page 27. Marketing managers develop pricing strategies, examine trends and the activities of competitors, and ensure that customers are satisfied with the product. Fashion designers, according to the *Handbook* at page 121, design and create garments, which also forms part of the responsibilities to be expected of the beneficiary. Neither of these fields requires a minimum of a bachelor's degree.

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position is 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)**

Citizenship and Immigration Services 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.

To the extent that the *Handbook* does not indicate that employers of fashion consultants 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 this field. Accordingly, the evidence does not support a finding that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

- 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 CIS when determining the industry standard include: whether the *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 fashion consultant's position were discussed above, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner submitted affidavits, supportive letters, and six job announcements. None of the affidavits or letters states that a bachelor's degree in a specific specialty is necessary to perform the proffered duties. Of the six job announcements, only three require a bachelor's degree in a specific specialty, and of these few, it is not established that the firms involved are similar in size and nature to that of the petitioner.

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 fashion consultant

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 did not submit any documentation with regard to other employees it has hired in similar positions.

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. The job description in the original petition contains work duties that are similar to those of a fashion designer and marketing manager. No further documentation as to any specialized or complex duties within the job classifications has been placed on the record. Without more persuasive evidence as to the specialized or complex nature of the fashion consultant 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.