



U.S. Citizenship
and Immigration
Services

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FILE: WAC 02 111 53553 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

[Redacted]

MAUG 04 2004

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]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

for *Man Johnson*
Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides art design consultation and services to major manufacturers. It seeks to employ the beneficiary as a textile designer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. On appeal, the petitioner submits a brief and additional information.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a textile designer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's February 11, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: originating designs for fabrication of textile, specifying weave pattern, color, and gauge of thread; developing new ideas for fabrics, utilizing knowledge of textiles and fashion trends; consulting with technical and merchandising staff to obtain design ideas; sketching designs for patterns using Computer Aided Design software, as well as graph paper, water colors, brushes, pens, and rulers; designing clothing and accessories; determining needs of the client; and conferring with production, design, and sales personnel to obtain design suggestions and customer orders. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in a textile-related field or an equivalent thereof.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The proffered position is that of a textile designer. A review of the *Handbook*, 2004-2005 edition, finds that a bachelor's degree is required for most entry-level design positions. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

The AAO will now address the director's conclusion that the beneficiary is not qualified to perform a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The director found that the beneficiary was not qualified for the proffered position. On appeal, the petitioner states, in part, that the beneficiary's "university equivalent studies and work experience in France" qualify her for the proffered position. The petitioner also states that the beneficiary has demonstrated her designer skills and competency during her 18 months of performing consulting duties for the petitioner while in J-1 status.

The record contains the following documentation relevant to the beneficiary's qualifications:

- Letter, dated March 4, 2002, from Professor [REDACTED] Master Advisor, Design [REDACTED] who states, in part, that the beneficiary's educational background combined with her internships and on-the-job experience are more than equivalent to a similar U.S. baccalaureate degree;
- Certificate (and transcripts) issued by the Institute of Graduate Studies in Applied Arts in Paris, France, on July 9, 1999, indicating that the beneficiary completed a 2-year study program for "Stylist - Designer in Textile";
- Attestation, dated February 25, 2002, from an individual from the Institute of Graduate Studies in Applied Arts in Paris, France, corroborating that the beneficiary attended such institution from 1997 to 1999 and "graduated with honors in textile design and decoration";
- Certificate of Schooling, issued by the director of the French art school, Atelier de Sevres, in Paris, France, on September 24, 1996, indicating that the beneficiary was enrolled for 27 hours of classes per week at such institution;
- Letter, dated February 28, 2002, from an individual of the French business, Apostrophe, who states, in part, that the beneficiary was engaged as a print designer for 61 weeks over a three year period, performing "duties that included design layout using computer programs overseen by company supervisors relevant in her field";
- Letter, dated February 28, 2002, from an individual of the French business, "UniVers mOde" who states, in part, that the beneficiary worked for such company in 2000 as a textile designer, performing duties that included creating patterns and prints for the trend books for both men's and women's textiles;
- Certificate of Work, dated April 10, 2002, certifying that the beneficiary was employed as an assistant designer from February 10, 2000 to April 10, 2000, for "S.A.R.L. UNIVERS MODE";
- Documents of internships, indicating that the beneficiary completed various internships lasting from approximately two weeks to a month in French businesses;

- Credentials evaluation from e-ValReports, dated March 7, 2002, concluding that the beneficiary holds the equivalent of a bachelor's degree in textile design from an accredited college in the United States;
- Letter, dated April 10, 2002, from the [REDACTED] who states, in part, that the beneficiary has been providing consulting services for its Pottery Barn Kids line of products, and that the petitioner requires that its designers and consultants hold a baccalaureate degree; and
- Letter, dated April 9, 2002, from the CEO/Director of Indigo, who states, in part, that his business will utilize the prototype designs created by the beneficiary, and that designers with a baccalaureate degree are considerably more professional than the designers without formal schooling.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a computer-related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains an evaluation from e-ValReports, a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a bachelor's degree in textile design from an accredited college in the United States. The evaluation, however, is based upon the beneficiary's education and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. The employers describe the beneficiary's duties generically; no specificity to the beneficiary's daily activities or her level of responsibility is provided. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is textile design. Furthermore, the employers do not indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the professor from the University of California cannot be considered a "recognized authority" because she did not describe her experience in giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom, or the basis for her conclusions supported by copies or citations of any research material used.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO does not find that a specialty occupation exists for the beneficiary because the petitioner, a newly established business with only one employee, has not provided any persuasive evidence that it has sufficient H-1B level work for the beneficiary. It is noted that the beneficiary's proposed duties include consulting with the technical and merchandising staff to obtain design ideas, determining needs of the client, and conferring with production, design, and sales personnel to obtain design suggestions and customer orders. The petitioner, however, has not demonstrated that it has any technical and merchandising staff, or any production, design, and sales personnel. Nor has the petitioner persuasively demonstrated that it has any clients. For this additional reason, the petition may not be approved.

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. The petition is denied.