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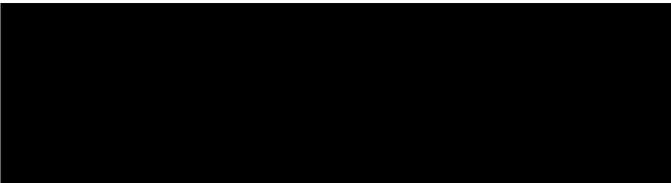


FILE: EAC 01 231 50997 Office: VERMONT SERVICE CENTER Date:

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:



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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**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 is a New York clothing manufacturer that custom designs and custom creates men's and boys' clothing. It seeks to employ the beneficiary as a clothes designer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel states that the position of fashion designer is a specialty occupation and submits further documentation.

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.

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 further evidence, dated October 2, 2001; (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 clothes designer. Evidence of the beneficiary's duties includes: the I-129 petition; a letter from the petitioner, dated July 12, 2001; and the petitioner's response to the director's request for further evidence. According to this evidence, the beneficiary would perform duties that entail: the preparation and the development of a style of clothing that is unique to the petitioner's company. The petitioner describes this style as its "signature line." The beneficiary's work would also entail the preparation of professional renderings and drawings for the production and design of garments.

The director found that the proffered position was not a specialty occupation because the petitioner did not meet any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). In particular, the director stated that the petitioner had not provided sufficient additional information that the position as described required the services of an individual holding a bachelor's degree in fashion design. The director also cited to the Department of Labor's *Occupational Outlook Handbook, (Handbook)*, 2000-2001 edition, and the academic requirements for the position of fashion designer.

On appeal, counsel asserts that the director's statement that the position of fashion designer does not require a baccalaureate degree for entry into the position is rebutted by the submission of numerous job postings from a variety of sources that all require a bachelor's degree in fashion design. Counsel also states that the job description submitted by the petitioner delineated the professional requirements for the position and also clearly specified the utilization of appropriate professional skills for the position. Counsel submits information taken off the Internet on various art institutes or schools in the United States and abroad that offer baccalaureate degrees in fashion design.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria 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." See *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)).

With regard to the educational or training requirement for designers, and in particular, fashion designers, the *Handbook*, on page 122 states:

A bachelor's degree is required for most entry-level design positions, except for floral design and visual merchandising. . . . In fashion design, employers seek individuals with a 2-or 4-year degree who are knowledgeable in the areas of textiles, fabrics, and ornamentation, as well as trends in the fashion world.

The *Handbook* contains somewhat contradictory information. While it indicates that most design positions require a bachelor's degree, it also states that employers hire either a graduate of a two-year or four-year program in fashion design. While it is clear from the *Handbook* information that the position of fashion designer

may be regarded as a specialty occupation, the duties of the position are more dispositive than the title. Given that the petitioner only provided a skeletal description of the duties of the proffered position, and provided no information on the specific duties of the beneficiary with regard to the design versus the actual production of the custom-made clothes, it may very well be that an individual with a two-year associate degree in fashion design or equivalent experience could perform the duties of the proffered position. Without more information as to the specific duties contained in the proffered position, the petitioner has not established that the proffered position is a specialty occupation.

Regarding parallel positions in the petitioner's industry, although counsel mentions the submission of various job postings for fashion designers, no such documentation was found in the record. Thus, the petitioner submitted no additional documentation. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2). The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner indicated in its cover letter that it had employed individual contractors to design clothing, and that it needed a professional designer who could develop a unique line of clothing for the petitioner. It appears that the proffered position is a new position. Therefore the petitioner cannot establish this criterion.

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(iii)(A)(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. As stated previously, the duties of the proffered position as described by the petitioner are skeletal, and lack details. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Although the petitioner mentioned that the beneficiary would develop a “signature” line of clothing, and counsel emphasized the idea of custom-made clothes being unique, neither counsel nor the petitioner provided any further documentation to substantiate these assertions. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

Beyond the decision of the director, the petitioner has also not established that the beneficiary is qualified to perform the duties of the proffered position. The record contains no information as to any university studies undertaken by the beneficiary. Therefore CIS would determine his qualifications for the proffered position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Under this regulatory criteria, 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. The two letters submitted by the petitioner with regard to the beneficiary's work experience in Syria contain only generic information as to the beneficiary's previous training or work experience with no supporting documentation. The letter writer for one document is unidentified. 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 fashion design. Furthermore,

neither employer indicates 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. In addition, the experience evaluation document written by Dr. [REDACTED] a faculty member at Queens College, and a consultant with Morningside Evaluation and Consulting, is problematic. CIS has received correspondence from an official of Queens College that Dr. [REDACTED] does not have authority to grant college-level credit for work experience or training taken at other U.S. or international universities.<sup>1</sup> Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *See Matter of SEA, Inc.*, 19 I&N Dec. 820 (Comm. 1988). The work experience evaluation submitted to the record is given no weight in this proceeding.

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.

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<sup>1</sup> Letter to Mr. Ron Thomas, Immigration and Naturalization Service, Texas Service Center, from Jane Denkensohn, Assistant Vice President and Special Counsel to the President, Queens College, The City University of New York, November 7, 2001.