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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

**FEB 26 2004**

FILE: EAC 02 104 53526 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:

[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.

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the AAO on appeal. The appeal will be sustained, and the petition will be granted.

The petitioner is an apparel wholesaler that seeks to employ the beneficiary as a technical knitwear coordinator. 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 on the basis that the proffered position did not meet the definition of a specialty occupation. On appeal, counsel submits a brief.

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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) the petitioner's motion to reconsider; (6) the director's decision affirming the denial of the petition; and (7) 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 technical knitwear coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's January 8, 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: managing the development, fabrication, importation, quality assurance, labeling and packaging, and other responsibilities relating to knitwear merchandising. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in fashion merchandising or a related field.

The director found that the evidence failed to demonstrate that the proffered position was a specialty occupation. The director concluded that the petitioner did not establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits documentation to support the third criterion described above at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), that the employer normally requires a degree or its equivalent for the position. Counsel includes copies of diplomas and proof of employment of two other individuals who previously held the proffered position. One of these workers has a bachelor of science degree in marketing, while the other has a bachelor of fine arts in fashion. Both of these fields are related to the bachelor's degree in fashion merchandising. On appeal, counsel also submits documents to establish that another worker in a related production position holds a bachelor of science degree in fashion merchandising, and that two others in the design division hold bachelor's degrees in apparel design. This documentation serves to establish that the petitioner requires other individuals in the same or similar positions to hold bachelor's degrees in fields related to fashion merchandising.

The petitioner has, thus, established that the proffered position is a specialty occupation. The petitioner has sustained the burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The appeal is sustained. The petition is granted.