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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE: WAC 03 113 52531 Office: CALIFORNIA SERVICE CENTER Date: SEP 02 2004

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

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prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The Director of the California Service Center 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 an importer and distributor of car accessories that seeks to employ the beneficiary as an exhibit 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 he found the proffered position was not a specialty occupation. On appeal, counsel submits a letter and a copy of the Department of Labor's *Occupational Outlook Handbook (Handbook)* description of the position of designer.

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 an exhibit designer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's January 28, 2003 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: designing catalogue and website displays and trade show exhibit booths; determining layout, lighting, materials, costs, and accessibility of exhibits; rendering designs through sketches, models, and computer aided design (CAD); and requisitioning materials for construction. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in design.

The director found that the proffered position was not a specialty occupation. Citing to the *Handbook* 2002-2003 edition, the director noted that the minimum requirement for entry into the position of designer was not a baccalaureate degree or its equivalent in a specific specialty. The director pointed out that a two or three-year degree in design was sufficient for some designer positions. On appeal, counsel asserts that the *Handbook* clearly indicates that a bachelor's degree in design is the minimum entry requirement for the instant position.

A review of the designer job description in the *Handbook* reveals several types of designers to which the proffered position might be compared. The instant position might be classified as that of a visual merchandiser, which, according to the *Handbook*, does not require a bachelor's degree. The offered position might also contain elements of the graphic designer position. Finally, the instant position might include duties of a trade show exhibit designer.

Unfortunately, the record lacks specific information about the proposed duties and intended design projects. The AAO notes that although the record contains photographs of the beneficiary's past design projects, it does not include examples of the petitioner's specific future projects, other than to name trade shows in which the petitioner plans to participate. Due to the vagueness of the job description, the AAO cannot determine which category of designer would be the most appropriate classification for the proffered position. The record, thus, fails to establish that a bachelor's degree is necessary to perform the duties of the instant position. Because the petitioner has failed to establish that the proffered position is a specialty occupation, the AAO shall not alter the director's decision to deny the petition.

Apart from the record's deficiency regarding the establishment that the position is a specialty occupation, the AAO notes that the record contains no evaluation of the U.S. equivalency of the beneficiary's foreign education. The record contains a translation of the beneficiary's foreign degree and transcripts, but no evaluation of the beneficiary's education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Such an evaluation is necessary in this case in order to enable CIS to determine whether the beneficiary is qualified to perform the duties of a specialty occupation. This lack of documentation of the beneficiary's qualifications is an additional reason for which the petition may not be approved.

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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.