



U.S. Citizenship
and Immigration
Services

02

[REDACTED]

FILE: EAC 03 113 53471 Office: VERMONT SERVICE CENTER Date: 07/17/07

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the 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 develops and produces garments. It seeks to employ the beneficiary as a merchandiser (technical design). The petitioner, therefore, 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 proffered position qualifies as a specialty occupation, and counsel submits additional evidence.

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 merchandiser (technical design). Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail conceptualizing new designs in technical gear; reviewing current lines and designs, and modifying, revising, and improving them; researching market trends; consulting with producers to determine costs of new and redesigned lines; determining and considering costs such as shipping, production, duties, customs, and taxes, and company overhead; using markups and projected profit margins to determine pricing; ordering and outsourcing designs and trimming; overseeing the quality of the finished product; creating trends, styles, motifs, and advertising materials. The petitioner stated that a candidate must possess a bachelor's degree in merchandising or a related specialty.

The director determined that the proffered position was not a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director determined that the petitioner's evidence did not demonstrate a past practice of requiring a bachelor's degree in merchandising or a related specialty for the proffered position. The director pointed out that the two companies that submitted letters about the proffered position never indicated that the position required a baccalaureate degree in a specific specialty. Similarly, the director found that only one-half of the submitted job postings indicated that a specific baccalaureate degree was required for a position in merchandising. Referring to the occupations of purchasing managers, buyers, and purchasing agents in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the *Handbook* reported that there is no specific bachelor's degree requirement for these positions, and that their duties are similar to those of the proffered position. Finally, the director mentioned that the petitioner did not establish that the beneficiary's day-to-day activities would require a theoretical and practical application of a body of highly specialized knowledge.

On appeal, counsel states that the submitted job postings clearly implied that the advertised position required a bachelor's degree in a relevant field. Counsel contends that the posting for an intern, which required a candidate who was at least a sophomore studying in a related field, demonstrated that a candidate who has graduated and is seeking a permanent position must possess a relevant degree.

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 first considers 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

A careful review of the *Handbook* discloses that the duties of the proffered position resemble those performed by fashion designers who design clothing and accessories. The *Handbook* mentions that most fashion designers work for apparel manufacturers, creating designs of men's, women's, and children's fashions for the mass market. According to the *Handbook*, in fashion design, employers seek persons with a 2- or 4-year degree who are knowledgeable about textiles, fabrics, and about trends in the fashion world. Accordingly, the petitioner fails to establish the first criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A) given that the *Handbook* states that employers accept candidates with a 2- or 4-year degree.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on letters from other companies and job postings.

The submitted letters from [REDACTED] are relevant, but they fail to establish the second criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A). [REDACTED] submitted two letters. The first letter, dated March 18, 2003, indicated that the position of merchandiser/technical design in the apparel industry required at least a "BA or BS degree." This letter did not maintain that the degree must be in a specific specialty. However, the educational requirement in the second letter, dated May 6, 2003, stated that an applicant must possess "a bachelor's degree in a closely related field." The educational requirements in the two letters are patently inconsistent. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Accordingly, the weight of Ms. Squire's second letter is diminished.

The March 19, 2003 letter from TravelSmith did not claim that the position of merchandiser/technical design would require a bachelor's degree in a specific specialty. The letters from Manchester Trade Ltd. and Blassport did declare that the proffered position would require a bachelor's degree in a related field of study. Nonetheless, the authors of the letters did not submit independent corroborating evidence that would support their declaration. Simply going on record without supporting documentary evidence is not sufficient for the

purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Of 14 job postings, only 7 require a bachelor's degree in a specific specialty. The designer positions from Federated Merchandising Group and The Limited seem parallel to the proffered position. However, Federated Merchandising Group and The Limited are dissimilar in size and scope from the petitioning entity. For example, Federated Merchandising Group is a division of Federated Department Stores which has over 400 stores and 120,000 employees. Consequently, the petitioner's evidence is insufficient to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree.

Nor is there sufficient evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a bachelor's degree or its equivalent for the position. Counsel's March 22, 2003 letter stated that four persons have been employed in a job similar to the proffered position. However, counsel related that only two of the four persons held a bachelor's degree in a related field. Consequently, the petitioner fails to establish that it normally requires a specific baccalaureate degree for the proffered position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As already discussed, the *Handbook* reports that employers do not require a baccalaureate degree for a position as a fashion designer. Therefore, the petitioner fails to satisfy the fourth criterion at 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.

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.