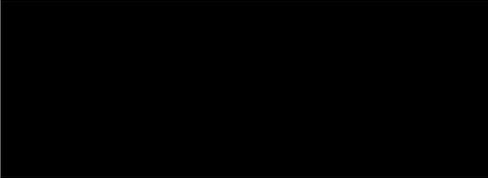




U.S. Citizenship
and Immigration
Services

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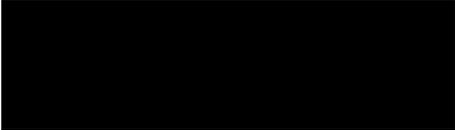
FILE: EAC 02 264 53013 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



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)(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.

A handwritten signature in black ink, appearing to read "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 Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is an importer and manufacturer of industrial, commercial, and retail textile products. It seeks to employ the beneficiary as a textile designer, and endeavors to classify her 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 offered position was not a specialty occupation. On appeal, counsel submits a brief and additional information.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 proceedings 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a graphic designer. Evidence of the beneficiary’s duties was included with the I-129 petition and in response to the director’s request for evidence. According to this evidence the beneficiary would: originate designs for fabrication of cloth for decorative pillows, towels, and other textile products; draw initial concepts and create new fabrics according to functional requirements and fashion preferences of designated industrial, commercial, and retail companies; design pillow and towel specifications and make decisions regarding color, structure, surface pattern, and weight, taking into consideration the final use of the fabric; forecast colors, patterns, and trends, utilizing technical and practical knowledge of fabrics; translate the designs into marketable fabrics; conduct studies of the market and fashion trends in order to estimate consumer acceptance of new types of fabrics; develop and implement customer presentations; work with fashion designers and licensors to develop proprietary lines; and use computer aided design (CAD) systems in the design process, including scanning prints, color adjusting image/color reduction, and creating simulations of woven and knit fabric using software. The petitioner requires a minimum of a bachelor’s degree in textile design or a related field for entry into the offered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel indicates that the offered position satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). In support of that assertion counsel submits a brief and additional evidence.

The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those performed by textile designers. Upon review of the record, the petitioner has established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). The *Handbook*, 2002-03 edition, notes that a bachelor’s degree is required for most entry-level design positions and that acceptable degrees in fine arts are granted at 4-year colleges and universities. The 2000-01 edition of the *Handbook* notes that academic training leading to a bachelor’s degree in art or design had virtually become a necessity. The petitioner further provided statements from similar businesses in the industry who stated that they employed textile designers with bachelor’s degrees in fine arts or textile design, and that the requirement was an industry standard. The proffered position does, therefore, qualify as a specialty occupation.

The director noted in his decision that the *Handbook* stated that “employers seek individuals with a two or four year degree who are knowledgeable in the areas of textiles, fabrics, and ornamentation, as well as trends in the fashion world.” This statement is true for fashion designers who design wearing apparel and accessories. The proffered position does not entail the design of wearing apparel. The position is more complex in that it requires the designer to not only design products for sale to its customers, but to create new fabrics for manufacture. The *Handbook* noted that a bachelor’s degree is required for most entry-level design positions, except for floral design and visual merchandising. As noted above, the offered position qualifies as a specialty occupation.

The director found that the beneficiary holds the equivalent of a baccalaureate degree in fine arts with a concentration in textile design from an institution of higher learning in the United States based upon an evaluation of the beneficiary’s foreign education. The beneficiary is, therefore, qualified to perform the duties of a specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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 sustained that burden. Accordingly, the decision of the director will be withdrawn and the appeal will be sustained.

ORDER: The decision of the director is withdrawn and the appeal is sustained. The petition is approved.