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FILE: WAC 03 156 50576 Office: CALIFORNIA SERVICE CENTER Date: OCT 04 2005

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, 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 is an importer, wholesaler, and distributor of home furnishings and textiles, and it also provides interior design services. In order to employ the beneficiary as an interior design consultant, the petitioner filed this petition to classify the position as an H-1B nonimmigrant worker in a specialty occupation, 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).

The director denied the petition on two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

This decision will address the specialty occupation issue first.

On appeal, counsel contends that the director erred by mischaracterizing the proffered position as a sales management job. Counsel argues in part that the evidence of record establishes that duties of the proffered position align with some that the Department of Labor's *Occupational Outlook Handbook (Handbook)* assigns to the interior designer occupation, which counsel asserts to be a specialty occupation. Counsel references and files with his brief a copy of the petitioner's December 9, 2003 letter of reply to the director's request for additional evidence (RFE), together with copies of the following documents that had been enclosed with this letter: the petitioner's organizational chart; Form D-6 information; copies of two of the petitioner's design contracts; a certification statement from the petitioner's president that, due to "the complexity and degree of difficulty of the duties and responsibilities," the petitioner "maintains and adheres to a hiring policy requiring a Bachelor's Degree in Fine Arts, Interior Design and other related field[s] for the position of Interior Design Consultant"; a November 17, 2003 letter from the manager of an interior design company that attests that, because "the duties and responsibilities of the Interior Design Consultant are difficult and complex," his company adheres to a policy of "hiring only baccalaureate degree holders"; and two job vacancy advertisements. The first advertisement requires a "bachelor's degree" (no major is specified) for a "Home Fashion Consultant to the Senior Leadership Team and merchandising group" at "a full-service interior design center highlighting trend-setting rooms for every part of the house." The second advertisement, which is for a "sales/design consultant" at a manufacturer/retailer of home furnishings, also requires a "bachelor's degree" without specifying a major.

The director was correct in denying the petition for its failure to establish that the proffered position is a specialty occupation. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the RFE; (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, including its addendum sheets, and counsel's brief and accompanying documentation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation

which [1] requires *theoretical and practical application of a body of highly specialized knowledge* in fields 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 [2] 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. (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public

accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner's job opening notice describes the proffered interior design consultant position as follows:

Research, gather facts and analyze the design and decorating trend, development and inclination on house and office decoration in the market as well as the preferences and desires of existing clients and customers. Develop, design, and implement design pattern[s], molds, model[s], and prototypes. Research and study new, modern, and innovative designs and models of home furnishings, textiles, and other home accessories specifically on their aesthetic value, consumer appeal and price.

Pages 3 and 4 of the petitioner's March 25, 2003 letter of support contain a table outlining the proposed duties in greater detail. The table specifies duties in research, fact-gathering, study and analysis of home and hotel furnishings and accessories; formulation of recommendations on products to be imported and sold by the petitioner; development and implementation of optimal ways to provide responsive advice and recommendations to clients and customers; effective presentation of design concepts and design proposals; mentorship over other designers; management of the interior design department, including responsibility for its workflow efficiency; fruitful coordination of ideas, styles, and designs; concept development; creation and execution of the final production of presentation materials; assistance to design teams in graphic production for collateral, packaging, display and advertising projects; logistical support to the production department; revision and design of a variety of publications; and performing or contracting for graphic design.

The director was incorrect in characterizing the proffered position as essentially a sales management position. As described in the record, the duties of the proffered position comport with those of the interior design occupational category as addressed on the section on designers in the 2004-2005 edition of the *Handbook*, which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations. However, contrary to counsel's view, the *Handbook* does not indicate that for interior design positions employers normally require at least a bachelor's degree, or its equivalent, in a specific specialty

closely related to the position's duties. The *Handbook* (at page 244) states that "a bachelor's degree is required for most entry-level design positions, except for floral design and visual merchandising." The *Handbook* does not state or otherwise indicate that most employers require that the degree be in a specific specialty. Each state has different requirements for certifying and registering interior designers; in the State of California, no post high school education is required. To become an interior designer there, California requires 6 to 8 years of total education and experience.<sup>1</sup> Using the beneficiary qualification standard at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) of 3 years of experience for one year of education, the State of California does not require sufficient education and experience combined to qualify the position as a specialty occupation. Accordingly, the proffered position does not qualify under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The letter from the interior design company and the record's job vacancy advertisements from other firms are consistent with the *Handbook's* information. The letter only attests to a policy of limiting hiring to "baccalaureate degree holders." There is no indication that the degrees must be in a specific specialty. The advertisements state only a general requirement for a bachelor's degree, without specifying majors or concentrations of study.

As the evidence of record has not established that the proffered position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As discussed earlier, the evidence does not establish the proffered position as one for which the *Handbook* reports a degree requirement in a specific specialty or for which the State of California requires a degree. The letter from the manager of an interior design company, which is the one submission from the petitioner's industry, neither addresses industry-wide hiring practices nor indicates a requirement for a degree in a specific specialty.

The evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), which provides a petitioner an opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with a at least a bachelor's degree in a

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<sup>1</sup> Information about the certification and registration requirements of particular states can be found at the Internet site of the American Society of Interior Designers, [www.asid.org](http://www.asid.org).

specific specialty. The petitioner's information about the proffered position does not demonstrate such uniqueness or complexity, and the record contains no independent evidence of such characteristics.

The evidence of record is insufficient to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty.

The petitioner's certification that it "maintains and adheres to a hiring policy requiring a Bachelor's Degree in Fine Arts, Interior Design and other related fields for the position of Interior Design Consultant" is not persuasive. The certification is not corroborated by any evidence in the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, as described in the record the proposed duties are not indicative of a position whose performance requires the theoretical and practical application of at least a bachelor's degree level of knowledge in a specific specialty. As already stated, the critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. See *Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000).

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The evidence of record is consistent with an interior design position not requiring a degree in a specific specialty.

There is no need for a lengthy discussion of the beneficiary qualification issue, as the AAO's determination on the specialty occupation is dispositive of this case. By application of the beneficiary qualification regulations at 8 C.F.R. §§ 214.2(h)(iii)(C) and (D) to the evidence, particularly the evaluation of the beneficiary's education and experience, the AAO finds that the beneficiary possesses the equivalent of a U.S. bachelor's degree in fine arts, with a major in interior design. The AAO discounts the evaluation's conclusion that the beneficiary's work experience elevates her educational credentials to the equivalent of a U.S. master's degree: the evaluator is not qualified under the regulations to evaluate the educational equivalent of work experience. The record does not reflect that the beneficiary has taken the certification examination required to practice the interior designer occupation in the State of California.<sup>2</sup> In light of the fact that the proffered position is not a specialty occupation, the beneficiary's qualifications are inconsequential.

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<sup>2</sup> See the state requirements reported at [www.asid.org](http://www.asid.org).

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the portion of the director's decision that dealt with this issue shall not be disturbed.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.