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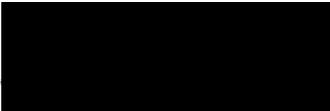
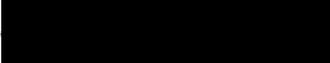
U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 03 196 54000 Office: CALIFORNIA SERVICE CENTER Date: **OCT 18 2005**

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)(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.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal on July 21, 2004. On September 6, 2005, the AAO reopened this proceeding on its own motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii) for purposes of entering a new decision. The appeal will be dismissed. The petition will be denied.

The petitioner is a lingerie manufacturing company that seeks to employ the beneficiary as a fashion 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 the beneficiary was not qualified to perform the duties of a specialty occupation. The AAO previously dismissed the appeal erroneously, as it had not received the brief. Subsequent to the AAO's summary dismissal, the AAO received the brief, along with proof that it was timely filed. The AAO has reopened the proceeding in order to adjudicate the appeal on the merits. The petitioner and its counsel were notified that they had 30 days to supplement the record. Neither the petitioner nor counsel replied to the request. Therefore, the record is complete.

On appeal, counsel states that the director improperly discounted the beneficiary's seven years of experience as a trend predictor. Counsel states that the beneficiary has an associate's degree in fashion design production, and that this education, combined with his work experience, is equivalent to a bachelor's degree. Counsel also states that the beneficiary's duties were progressively responsible, and that she was providing a letter from the beneficiary's employer to establish this. Counsel also states that she was providing copies of the beneficiary's bank statements to establish that he was paid for his employment. Neither exhibit is in the record, and they were not provided in response to the AAO's September 6, 2005 request.

The director determined that the beneficiary is not qualified to perform the duties of a specialty occupation. Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner is seeking the beneficiary's services as a fashion designer. The petitioner indicated in its June 17, 2003 letter that it wished to hire the beneficiary because he possessed an associate's degree and work experience in the design field. The petitioner stated that it does not require a baccalaureate degree, as long as the candidate has sufficient experience.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states that the beneficiary is qualified for the position because he was employed by ██████████ Ltd. for almost eight years. Counsel states that the director seems to have disregarded the letter from the beneficiary's previous employer, as there was no corroborating evidence that it was the beneficiary's employer. The beneficiary worked for his employer as a part-time assistant to the manager, and then he was sent to the United States to work as the company's trend predictor while he was in school. Counsel states that the company paid for the beneficiary's education and living expenses. Counsel asserts that the April 3, 2003 letter from the beneficiary's previous employer established that the beneficiary worked in progressively responsible positions.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

When Citizenship and Immigration Services (CIS) determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>1</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The AAO turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. As previously noted, the record does

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

not contain the documents counsel states establish that the beneficiary's duties with his previous employer were progressively responsible, and that the previous employer paid the beneficiary during the time stated.

As described in the April 3, 2003 letter from the beneficiary's previous employer, the beneficiary's duties did not appear to involve the theoretical and practical application of fashion design. The employer states that the beneficiary's duties included: reporting the most updated fashion trends in the United States on either a daily or weekly basis; reporting sketches or photos of new garment construction techniques; and "resource[ing]" the U.S. markets for a future expansion of the employer's company to the U.S. market. There is no specificity to the beneficiary's daily activities or his level of responsibility. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is fashion design. Furthermore, the employer does not indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Finally, there is insufficient evidence that the beneficiary has recognition of expertise.

In counsel's letter following the AAO's summary dismissal for not filing a brief, counsel states that it sent its brief to the AAO within the 30-day period. The AAO notes that the brief was sent to the California Service Center, rather than the AAO. Counsel checked the box on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU), which states, "I am sending a brief and/or evidence *to the AAU* within 30 days." (Emphasis in the original). The regulation states:

Every application, petition, appeal, motion, request or other document submitted on the form prescribe by this chapter shall be executed and filed in accordance with the instructions on the form, such instruction (including where an application or petition should be filed) being hereby incorporated into the particular section of regulations in this chapter required its submission. 8 C.F.R. § 103.2(a)(1).

The petitioner should have mailed the brief directly to the AAO in accordance with the regulation.

Beyond the decision of the director, the AAO finds that the proffered position is not a specialty occupation. 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.

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 fashion designer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 17, 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 and sketching sample garments via the customer's request; producing and digitizing sample patterns and pre-production patterns; making and providing production marker via request; partially supporting the art department; and contacting overseas fabric suppliers. The petitioner indicated that a qualified candidate for the job would not need to possess a bachelor's degree if he or she has sufficient experience.

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 turns first to 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The *Handbook* states, "In fashion design, employers seek individuals with a 2- or 4-year degree who are knowledgeable in the areas of textiles, fabrics, and ornamentation, and about trends in the fashion world. . . .

Graduates of 2-year programs normally qualify as assistants to designers.” While some 2-year graduates may start as assistants to designers, the industry standard is clearly that both 2- and 4-year degree holders are typically hired in the industry.

No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for entry into the occupation of fashion designer.

The petitioner submitted no evidence regarding parallel positions in the petitioner’s industry. In response to the director’s request for evidence, counsel submitted a letter from the director of human resources from another designer, which discussed the differences between 2- and 4-year degree programs in fashion design. She concludes that the most important element of a good designer is his or her eye for fashion, and that this can be developed through either a 2- or 4-year degree program. The author also states that a new graduate with either an associate’s or a bachelor’s degree would rarely be hired into a full fashion design position, and that experience is necessary to be hired into such a position. The petitioner also submitted a letter from the Fashion Department Program Coordinator of Orange Coast College, where the beneficiary earned his associate’s degree, which states that an associate’s degree “is necessary for employment in the Southern California apparel industry.” These letters corroborate the discussion in the *Handbook* that a four-year degree is not required for entry into the position.

The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As noted, the petitioner stated in its June 17, 2003 letter of support, “We do not require a baccalaureate degree for the fashion designer position, as long as the candidates have sufficient experience.” The petitioner does not have a degree requirement.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. For this additional reason, the petition may not be approved.

The petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation, or that the position is a specialty occupation. Accordingly, the AAO shall not disturb the director’s denial of the petition.

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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.