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FILE: WAC 04 057 52035 Office: CALIFORNIA SERVICE CENTER Date: **OCT 26 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a furniture manufacturer. It seeks to employ the beneficiary as a furniture designer and to classify him 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 ground that the record failed to establish that the proffered position qualifies as 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.

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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as a manufacturer and importer of furniture, established in 1997, with 24 employees and gross annual income of more than \$2 million. The petitioner proposes to hire the beneficiary as a furniture designer. According to the petitioner, the position requires a bachelor's degree or its equivalent and the beneficiary is qualified based on his three years of college education at the University of San Jose-Recoletos in Cebu City, the Philippines, and 16 years of experience in furniture design. In response to the RFE counsel indicated that the beneficiary would be working independently and considering factors such as appearance, design function relationship, serviceability, materials and methods engineering, application, budget, price production costs, methods of production, market characteristics and client specifications in designing furniture. Essential responsibilities of the position were described as follows:

- Design furniture for production in accord with design trends, characteristics of the market and . . . customized orders.
- Confer with production and sales personnel to obtain design suggestions and customer orders.
- Prepare blueprints indicating the manufacturing specifications such as dimension, kind of wood, upholstery fabrics to be used.
- Plan modifications for completed furniture to conform to changes in design trends and increase customer acceptance.

A list of the petitioner's employees, submitted with the response to the RFE, identifies (in addition to the president) three office workers, one assembler, three sanders, eight finishers, twelve upholsterers, one driver, and one shipper.

The director found that the furniture designer position did not qualify as a specialty occupation under the Act. The director determined that the duties of the proffered position reflected the duties of a woodworker, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. As noted by the director, the *Handbook* indicates that a bachelor's degree in a specific specialty is not the normal industry-wide requirement for entry into the occupation or woodworker. The documentation of record did not establish that such a degree requirement is common to the furniture manufacturing industry in parallel positions among similar organizations, the director stated, or that the proffered position is so complex or unique that it requires an individual with a specialty degree. There was no evidence that the employer had previously required a baccalaureate or higher degree for the position, the director continued, or that the duties of the position are so specialized and complex that baccalaureate level knowledge or higher is required to perform them.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also scrutinizes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

On appeal counsel asserts that the proffered position accords with the *Handbook's* description of an industrial designer. According to counsel, an industrial designer requires a bachelor's degree. Counsel also refers to a previously submitted internet job posting for a furniture designer as evidence that furniture designers also require a bachelor's degree. Counsel asserts that the duties of the proffered position, previously listed, involve mathematical and engineering methodologies that can only be performed by an individual with a baccalaureate degree or its equivalent.

In deciding this appeal, the AAO must initially determine which occupational category in the *Handbook* best describes the proffered position. Counsel argues that the beneficiary will be performing the duties of an industrial designer, an occupation described as follows in the *Handbook*, 2004-05 edition, at 242, 244:

*Commercial and industrial designers* develop countless manufactured products, including airplanes; cars; children's toys; computer equipment; furniture; home appliances, and medical, office, and recreational equipment. They combine artistic talent with research on the use of a product, on customer needs, and on marketing, materials, and production methods to create the most functional and appealing design that will be competitive with others in the marketplace. Industrial designers typically concentrate in a subspecialty such as kitchen appliances, auto interiors, or plastic-molding machinery.

. . . Most commercial and industrial designer s were employed [in 2002] in manufacturing or architectural, engineering, and related services . . . .

The director found that the proffered position fit within the *Handbook's* description of woodworkers. That occupation is described, in pertinent part, as follows:

All woodworkers are employed at some stage of the process through which logs are transformed into finished products . . . . They operate machines that cut, shape, assemble, and finish raw wood to make the doors, windows, cabinets, trusses, plywood, flooring, paneling, molding, and trim that are components of most homes. Others may fashion home accessories, such as beds, sofas, tables, dressers, and chairs . . . .

. . . [P]recision or custom woodworkers – who generally work in smaller firms – have continued to employ the same production techniques they have used for many years. Workers such as cabinetmakers and bench carpenters; model makers and patternmakers; and furniture finishers work on a customized basis, often building one-of-a-kind items. These highly skilled precision woodworkers usually perform a complete cycle of tasks – cutting, shaping, and preparing surfaces, and assembling prepared parts of complex wood components into a finished wood product. For this reason, these workers normally need substantial training and an ability to work from detailed instructions and specifications. In addition, they often are required to exercise independent judgment when undertaking an assignment.

. . . . About 3 out of 4 woodworkers were employed [in 2002] in manufacturing industries. Among these woodworkers, 41 percent were found in establishments fabricating household and office furniture and fixtures . . . .

*Handbook, id.*, at 594-95. The AAO determines, consistent with the director's decision, that the duties of the proffered position closely parallel those of a precision or custom woodworker, as described in the *Handbook*. The company brochures in the record, which include photos of its furniture pieces, the petitioner's own photos of the inventory and other company literature, together with the petitioner's description of its employee staff and gross income level, indicate a scale of operations and a clientele consistent with the need for a precision or custom woodworker to design its furniture. Though counsel emphasizes the challenging design aspects of the proffered position, the record does not demonstrate that they exceed the design aspects of a precision or custom woodworker as described in the *Handbook*.

With respect to the educational requirements of woodworkers in general, the *Handbook* states as follows:

Most woodworkers are trained on the job, picking up skills informally from experienced workers . . . . Some woodworkers acquire skills through vocational education or by working as carpenters on construction jobs. Others may attend colleges or universities that offer training in areas including wood technology, furniture manufacturing, wood engineering, and production management. These programs prepare students for positions in production, supervision, engineering, and management.

*Handbook, id.*, at 595. It is clear from this information that a bachelor's degree in a specific specialty is not the normal industry-wide minimum requirement for entry into a woodworker position, even as a precision or custom woodworker. While a college education in a specialty field may be preferred for some more advanced positions in the industry, it is not the normal minimum requirement for entry into a precision or custom woodworker position such as the furniture designer position at issue in this petition. Accordingly, the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), counsel refers to the internet job posting for a furniture designer from an office interiors company. The job posting plainly states, however, that the requirements for the job are a minimum of two years experience, with "FIDER accredited Design Degree preferred." No baccalaureate degree is required. Thus, the internet job posting does not establish that a baccalaureate or higher degree in a specific specialty is a common requirement of the petitioner's industry in parallel positions among similar organizations, as required for proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

Nor does the record demonstrate that the proffered position is so complex or unique that it can only be performed by an individual with a specialty degree. Though counsel asserts on appeal that the job involves mathematical and engineering methodologies that can only be performed by an individual with a baccalaureate degree or its equivalent, no documentary evidence or examples have been submitted to support that claim. Mere assertions by counsel will not satisfy the petitioner's burden of proof. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

With respect to the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that

it normally requires a bachelor's degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. As previously discussed, the duties of the position are akin to those of a precision or custom woodworker, for which knowledge gained through on-the-job experience or vocational training is typically required, not a baccalaureate or higher degree.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

**ORDER:** The appeal is dismissed. The petition is denied.