



U.S. Citizenship  
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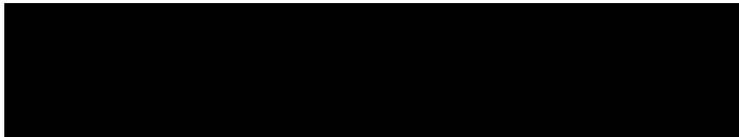


FILE: EAC 06 047 52280 Office: VERMONT SERVICE CENTER Date: MAY 10 2006

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 sustained. The petition will be approved.

The petitioner is a designer of apparel and accessories for young women. It seeks to employ the beneficiary as a technical designer and to continue her classification 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.

As provided in 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, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In its initial submission, including Form I-129 and an accompanying letter, the petitioner described itself as a fashion company that designs a range of women's clothing products and accessories targeting, in particular, teenagers and young adults. The petitioner stated that it was established in April 2001, had 40 employees at the time of filing, and proposed to hire the beneficiary as a technical designer. The duties of the proffered position were described as follows:

[The beneficiary] will have full and overall responsibility for handling all aspects of design projects and illustrations of graphics for print and output. [She] will assist designers in all areas of design development process . . . [and] conduct fabric research and sourcing for wovens and knits to present to designers. [She] will initiate all woven proto requests, scan and maintain a library of original proto sketches, initiate line sheet, will be responsible for development of prints, yarn dyes, request and follow up with color requests, strike offs and hand looms, and maintain color standards and lab dips. She will organize and maintain fabric tailoring cuts, be responsible for trim research (*i.e.* buttons, d-rings, belts) and development, notion research (*i.e.* netting, horse hair, lining), developing and order[ing] sample trims and trims for duplicate lines, researching trends of [the petitioner], and maintain[ing] storyboards and merchandising charts. She will also be responsible for design fitting schedules, maintaining sample closets, assisting sales with special projects and customer requests, packing, shipping and steaming sales samples, and communicating to agents abroad on a regular basis to discuss all revisions and changes.

[The beneficiary] will also: (1) assist with the preparation of line samples for each season; (2) make sample requests for presentation; and (3) design details while coordinating with technical designers.

The major focus of this job is the computer rendering of the garments that were designed by our creative design team. [The beneficiary] will take rough sketches and create a computer rendering that includes all of the technical aspects and specifications that will be utilized by the manufacturers to actually produce the garment. [The beneficiary] will coordinate these designs by using professional equipment and graphical applications through computer graphic software such as Macintosh environment and CAD [computer aided design], QuarkXpress, Adobe PhotoShop, and Adobe Illustrator.

These standardized designs, commonly known as technical sketches, detail sketches and construction sketches, include all of the technical specifications and instructions as to style, fabric, stitching and construction.

The beneficiary will use these software systems to make size spec sheets, color way instruction, fabrication sheets, trim sheets, as well as artwork information (for embroidery, print and logo, etc.), labeling, packaging sheets and care instructions.

According to the petitioner, the foregoing skills, especially the computer design skills on CAD software, are developed during a four-year baccalaureate program in fashion design or the equivalent. The petitioner states that the minimum educational requirement for the technical designer position is a

bachelor's degree in fine arts. The beneficiary is qualified for the position, the petitioner declares, by virtue of her bachelor of fine arts, with a major in fashion design, from the Parsons School of Design, New School University, in New York City, awarded on May 21, 2004. The petitioner also points out that the beneficiary worked in H-1B status for another U.S. designer in New York City pursuant to an H-1B petition that was approved on October 8, 2004 and valid until November 1, 2007.

In response to the RFE, the petitioner indicated that it employs two other technical designers, both of whom have baccalaureate degrees in fashion design. One of the two was hired as an H-1B worker and the other was hired on an O-1 visa as an alien of extraordinary ability in the arts. The petitioner submitted documentary evidence of the employment and visa status of the two individuals.

The director found that the proffered position accords with the occupational category of fashion designer, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. Based on language in the *Handbook* discussing the educational requirements of fashion designers, the director found that 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), because a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into such a position. The director analyzed the various documents submitted by the petitioner and determined that they failed to establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to meet the second alternative criterion of a specialty occupation at 8 C.F.R § 214.2(h)(4)(iii)(A)(2), or that the petitioner normally requires a specialty degree for the proffered position, as required for the position to meet the third alternative criterion of a specialty occupation at 8 C.F.R § 214.2(h)(4)(iii)(A)(3). The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated in the regulation at 8 C.F.R § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director misconstrued the evidence of record and erred in finding that the proffered position does not qualify as a specialty occupation. Though only one criterion need be met to qualify as a specialty occupation, counsel asserts that the proffered position meets each of the four criteria enumerated at 8 C.F.R § 214.2(h)(4)(iii)(A).

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*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes 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.

The AAO agrees with the director that the proffered position fits the *Handbook's* description of a fashion designer. The occupation is described in the *Handbook*, 2006-07 edition, as follows:

*Fashion designers* . . . study fashion trends, sketch designs of clothing and accessories, select colors and fabrics, and oversee the final production of their designs. Clothing designers create and help produce men's, women's, and children's apparel, including casual wear, suits, sportswear, formalwear, outerwear, maternity, and intimate apparel . . .

[T]he first step in creating a design is researching fashion trends and making predictions of future trends . . . .

Once designs and fabrics are chosen, a prototype of the article . . . is created . . . . After the final adjustments and selections have been made, samples of the article using the actual materials are sewn, and then marketed to clothing retailers . . . . Retailers will then place orders for certain items, which are then manufactured and distributed to stores.

Computer-aided design (CAD) is increasingly being used in the fashion design industry. While most designers initially sketch designs by hand, a growing number also translate these hand sketches to the computer. CAD allows designers to view designs of clothing on virtual models and in various colors and shapes, thus saving time by requiring fewer adjustments of prototypes and samples later.

With respect to the educational qualifications of the occupation, the *Handbook, id.*, states the following:

In fashion design, employers seek individuals with a two-year or four-year degree who are knowledgeable about textiles, fabrics, ornamentation, and fashion trends . . . .

Bachelor's of fine arts and associate degree programs in fashion design are offered at many colleges, universities, and private art and design schools . . . . Basic coursework includes color, textiles, sewing and tailoring, pattern making, fashion history, CAD, and design of different types of clothing such as menswear or footwear. Coursework in human anatomy, mathematics, and psychology also is useful.

The AAO agrees with the director, based on the foregoing information, that a baccalaureate degree is not the normal minimum requirement for entry into a fashion designer position. Though some employers may require a baccalaureate degree in fashion design, a two-year associate degree is sufficient for other positions. Thus, 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).

Based on the petitioner's description of the proffered position's duties, however, the prominent use of CAD and other computer software in the clothing design process, the nature and scale of the petitioner's business, and the supporting documentation in the record, the AAO determines that the proffered position meets the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate degree in fashion design or a related specialty.

To be qualified to perform services in a specialty occupation, the beneficiary must meet one of the following criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(C):

- (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.

As previously indicated, the beneficiary earned a bachelor of fine arts degree, with a major in fashion design, from the Parsons School of Design, New School University, in New York City, on May 21, 2004. The AAO determines that the beneficiary qualifies under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) to perform the services of the specialty occupation.

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of that occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the AAO will sustain the appeal and approve the petition.

**ORDER:** The appeal is sustained. The petition is approved.