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U.S. Citizenship
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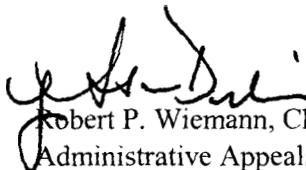
IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an import/export wholesaler of hair and fashion accessories which claims to employ seven personnel and to have a gross annual income of \$4,737,310 when the petition was filed. It seeks to employ the beneficiary as a fashion accessory designer. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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).

On July 25, 2007, the director denied the petition determining that the petitioner had not established that the position is a specialty occupation within the meaning of the regulations. On appeal, counsel for the petitioner asserts that the proffered position is a specialty occupation and submits the opinions of two individuals who offer their evaluations of the proffered position.

The issue before the AAO is whether the proffered position 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 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 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 are 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) the Form I-129 filed April 2, 2007 and supporting documentation; (2) the director's April 19, 2007 request for evidence (RFE); (3) counsel for the petitioner's July 12, 2007 response to the director's RFE with supporting documentation; (4) the director's July 25, 2007 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 fashion accessory designer. In a March 20, 2007 letter appended to the petition, the petitioner stated that the beneficiary, in the position of fashion accessory designer:

Will be responsible for fashion accessory design/accessory packaging design/Special Catalog design. In doing so, [the beneficiary] will be responsible for studying latest fashion trends, sketching designs for fashion accessories, overseeing the final production of designs, creating most effective visual solutions for packaging designs and other medias to sell products. [The beneficiary] will also research latest trends in fashion jewelry and accessory/design/sketch and produce prototype that will be sent to the production dept. [The beneficiary] will choose materials/make recommendations to other staff members/visit trade shows and represent our company during special trade shows.

In a July 12, 2007 response to the director's RFE, counsel for the petitioner asserted that a bachelor's degree in fashion or a closely related field is typical in the fashion industry; and that although the proffered position is a new position for the petitioner, the petitioner had imposed a requirement of a bachelor's degree because the individual in the position must utilize his/her specialized knowledge in the field of fashion accessory design or closely related fields. Counsel noted the duties initially described and listed the types of related courses that would correspond to each duty. Counsel also provided copies of approval notices and partial records for two other H-1B petitions for fashion designers and a copy of the petitioner's job announcement for the position indicating that the petitioner required the minimum of a bachelor's degree in fashion design or a related field.

On July 25, 2007, the director determined: (1) that the petitioner had not established that the previously approved H-1B petitions were for positions that were similar to the proffered position; (2) that the Department of Labor's *Occupational Outlook Handbook (Handbook)* reported that employers sought fashion designers with either a two or four-year degree; and (3) that the proffered position was a new position and that advertising the position as requiring a bachelor's degree in fashion design or a related field was insufficient to demonstrate that the petitioner had historically required the minimum of a bachelor's degree in a specific field of study. The director concluded that the petitioner had not established that the job offered qualified as a specialty occupation pursuant to any of the four criteria set out in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel for the petitioner submits the opinions of two individuals. In an August 23, 2007 opinion prepared by Professor ██████████, Professor ██████████ opines: "[c]ompanies seeking to employ a Fashion Accessory Designer require prospective candidates to possess at least a bachelor's degree in the area of Fashion Design, or a related field, from an accredited institution of higher learning" and thus is considered an industry standard requirement. Professor ██████████ repeats the petitioner's description of duties for the proffered position and states that the skills required for the position are developed in the junior and senior years of an undergraduate program in fashion design or a related field. Professor ██████████ concludes with her opinion that the position of fashion accessory designer is clearly a specialty occupation and requires the services of someone with the minimum of a bachelor's degree in fashion design or a related field.

In an August 9, 2007 opinion prepared by ██████████ Program Director/Full-Time Faculty Member, South University, ██████████ opines: "[t]he position of Fashion Accessory Designer is a common position required by similar sized companies and clearly meets the standards of a 'Specialty Occupation Position'" and "[t]herefore, a Bachelor's degree is normally required and is common to the industry in parallel positions among similar organizations." ██████████ repeats the description of duties provided by the petitioner for the proffered position and adds other duties that a fashion accessory designer would typically perform. ██████████ opines that only an individual with at least a bachelor's degree in fashion design or a related subject could effectively perform the complex responsibilities described by the petitioner. ██████████ further opines: "in order to obtain the knowledge necessary to serve as a Fashion Designer at [the petitioner], in New York, New York, the individual must have completed specific university coursework in Fashion Design or a related subject." ██████████ lists the subjects, in her opinion, that the individual must have completed. ██████████ concludes, based on her analysis of the occupation, the job responsibilities of the position, and her expertise in the field of higher education, that the petitioner's position of Fashion Accessory Designer would require a bachelor's degree in fashion design or a related subject in order to adequately perform the complex duties required for the position.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) and whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* provides the following regarding the occupation of fashion designers, including fashion accessory designers:

Fashion designers help create the billions of dresses, suits, shoes, and other clothing and accessories purchased every year by consumers. 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. *Footwear designers* help create and produce different styles of shoes and boots. *Accessory designers* help create and produce items such as handbags, belts, scarves, hats, hosiery, and eyewear, which add the finishing touches to an outfit.

The *Handbook* also provides information regarding the education necessary to perform the duties of a fashion designer:

In fashion design, employers usually seek individuals with a 2- or 4-year degree who are knowledgeable about textiles, fabrics, ornamentation, and fashion trends.

Education and training. Bachelor's of fine arts and associate degree programs in fashion design are offered at many colleges, universities, and private art and design schools. Some fashion designers also combine a fashion design degree with a business, marketing, or fashion merchandising degree, especially those who want to run their own business or retail store. Basic coursework includes color, textiles, sewing and tailoring, pattern making, fashion history, computer-aided design (CAD), and design of different types of clothing such as menswear or footwear. Coursework in human anatomy, mathematics, and psychology also is useful.

Based on the *Handbook's* discussion of the occupational title of fashion designer, the AAO finds that the description of duties of the proffered position corresponds generally to this occupational title. As the *Handbook* reports, employers usually seek individuals with a 2- or 4-year degree for this occupation. Thus, the *Handbook*, a source routinely used to establish the normal minimum requirement for entry into particular positions, clearly indicates that employers find that individuals with less than a bachelor's degree are qualified to perform the duties of the occupation.

The AAO has reviewed the two opinions submitted by [REDACTED] and [REDACTED]. Both [REDACTED] and [REDACTED] opine that the industry standard for a fashion accessory designer is a bachelor's degree. However, unlike the *Handbook*, which offers an overview of national hiring practices, draws on personal interviews with individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification, or licenses in the field, to reach its conclusions regarding the nation's employment practices, [REDACTED] and [REDACTED] offer only conclusory opinions. Neither Professor [REDACTED] nor [REDACTED] indicate whether they are relying on anecdotal evidence or have researched the subject and conducted objective surveys. The AAO acknowledges that some fashion accessory designer occupations may require a bachelor's degree in fashion design or a related field; however, neither professor gives sufficient details about the complexity of the duties in relation to the petitioner's wholesale business to substantiate her conclusions. There is thus an inadequate factual foundation established to support the opinions. The AAO may, in its discretion, use as advisory opinion

statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The opinions of [REDACTED] and Dr. [REDACTED] are insufficient to overcome the *Handbook's* report that employers usually seek fashion designers with either a two- or four-year degree. The AAO finds that a baccalaureate or higher degree or its equivalent in a specific specialty is not the normal minimum requirement for entry into a position of a fashion accessory designer occupation. The petitioner has, accordingly, failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of the proffered position under the second criterion, whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. Factors often considered by CIS when determining the industry standard include: 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 petitioner has not submitted job announcements, industry letters, or letters from professional associations to establish that the proffered position is a specialty occupation. The AAO again acknowledges the opinions submitted by [REDACTED] and [REDACTED] that attempt to establish that a fashion designer occupation is a specialty occupation. However, again, neither [REDACTED] nor [REDACTED] provides an adequate factual foundation to substantiate their opinions. The AAO observes that [REDACTED], in addition, to restating the petitioner's description of the proffered position adds duties that she believes are incorporated into the occupation of a fashion designer; but the record does not establish that the petitioner would require the individual in the proffered position to perform these additional duties. Moreover, the duties the petitioner describes which track the *Handbook's* overview of the occupation of a fashion designer, according to the *Handbook*, may be performed by an individual with either a two- or four-year degree.

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree in a specific discipline can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment. The record does not contain information that shows that the individual in the proffered position would be called upon to perform duties that are more complex or unique to the petitioner's position, such that only an individual with a degree in a specific discipline could perform those duties. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) which provides that an employer establish that it normally requires a degree or its equivalent for the position. The AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In this matter, the petitioner has not indicated that it previously employed individuals in the proffered position.

Moreover, while a petitioner may believe that a proffered position requires a degree, the petitioner's opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, than any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) which requires that the petitioner establish that 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. When assessing whether the petitioner has met its burden with regard to this criterion, the AAO considers the duties of the position, not the occupation, or the industry-wide standard associated with the occupation. As observed above, the duties of the proffered position would not require the beneficiary to possess skill or knowledge beyond that typically held by a fashion accessory designer, employment on which the *Handbook* does not impose a specific degree requirement to perform.

The AAO has again reviewed the opinions of [REDACTED] and [REDACTED] when considering whether the petitioner has established this criterion. Neither [REDACTED] nor [REDACTED] indicates that they reviewed company information about the petitioner, visited the petitioner's site, interviewed the petitioner, or otherwise investigated the nature of the specific employment that is the subject of this petition. In addition, neither [REDACTED] nor [REDACTED] gives sufficient details about the complexity of the duties in relation to the petitioner's wholesale business to substantiate their conclusions. Again, there is an inadequate factual foundation established to support the opinions. As observed above, the AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. at 791. The record does not establish that the proposed duties exceed the scope of a typical fashion accessory designer. The AAO is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than that of a typical fashion accessory designer and that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in computer science or a related field. The opinions of these two professors are not sufficiently specific to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Without more persuasive evidence, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Upon review of the totality of the record, the record fails to reveal any evidence that the offered position requires a bachelor's degree, or its equivalent, in a specific discipline. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The petition will be denied and the appeal dismissed for the above stated reason. The burden of proof in this proceeding 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