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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, N.W.
Washington, DC 20536

[redacted]

File: EAC 01 223 54679 Office: VERMONT SERVICE CENTER Date: [illegible] 22 [illegible]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 a clothing store for children that seeks to employ the beneficiary as a fashion designer. The petitioner, therefore, 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 proffered position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the 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.

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 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 entirely 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; counsel's June 28, 2001 letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: preparing concept sketches; developing ideas to create clothing patterns using Photoshop and other programs; and presenting conceptual and visual suggestions. The letter stated that a qualified candidate for the job would possess a bachelor's degree in fashion design or industrial design, or an equivalent.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*), 2000-2001 edition, the director noted that in fashion design employers seek persons with two or four-year degrees who are knowledgeable in areas such as textiles and fabrics. The director stated that no evidence has been produced indicating that the industry requires a bachelor's degree for entry into the occupation. The director further stated that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position requires skill in creative and user-oriented design and pattern making. Counsel refers to letters from newspapers, boutique chains, buyers, representatives, and others to attest to the necessity of an in-house BA level fashion designer and cites university degree programs to demonstrate that a bachelor's degree is required for the proffered position. Adverting to the Department of Labor's *Dictionary of Occupation Titles (DOT)*, counsel mentions that the *DOT* assigns the position an SVP rating of 7 which indicates that over two years and up to and including four years of total education and experience are necessary to perform the duties of the position. Counsel, moreover, maintains that a bachelor's degree is equivalent to 4 years on the SVP scale, evincing the necessity of a bachelor's degree. According to counsel, the *Handbook* confirms a bachelor's degree is necessary because it reports that employers seek persons with a two or four-year degree with knowledge in specific areas, and that graduates of two-year programs qualify only as assistants to designers, not as sole or chief fashion designers. According to counsel, as the

sole designer the beneficiary will design and create original, unique clothing for children, men, and women. These duties, counsel asserts, are not to be entrusted to a person possessing less than a bachelor's degree or its equivalent in a related field.

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.

Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the *DOT* (4th Ed., Rev. 1991). However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network* (*O*Net*). Both the *DOT and O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, Citizenship and Immigration Services (CIS) is not persuaded by a claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it a specific SVP rating in the *DOT*.

Factors often considered by CIS when determining whether a position is a specialty occupation 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO does not agree with counsel that the proffered position

requires a bachelor's degree in a specific specialty. A review of the specific paragraph regarding fashion designers in the training, qualifications, and advancement section of the *Handbook* reports:

> 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 trends in the fashion work.

Counsel claims that the *Handbook* confirms that a bachelor's degree is required for a sole or chief fashion designers. To buttress this claim, counsel cites to the *Handbook's* paragraph that discusses training requirements for design professions; however, counsel ignores the more specific paragraph in the *Handbook* pertaining to the educational and training requirements for fashion designer positions in the fashion industry. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a fashion designer job.

The petitioner's opinion letters are insufficient to establish that a bachelor's degree is the minimum requirement for entry into the fashion designer position. The letter from Bergdorf Goodman does not report that firms routinely employ and recruit only degreed individuals; nor does it allude to a degree requirement. The letter merely states that the presence of an in-house designer is practically a necessity. The letters from Leigh Brigaud, Inc, Tocca, Fashion Wire Daily, Martha Stewart Living, and George Lung, a designer with Armani Xchange, are more on point; however, they in themselves do not establish an entry requirement. Furthermore, some of the language in the four letters is nearly identical, casting doubt on the probative value of the letters. For example, the statement that the fashion designer has a bachelor's degree in fashion design or the equivalent skills, knowledge, experience, training or combinations of academic and experience-based training, is repeated verbatim in all of the letters. The letters from Calypso, dosa, the Hat Shop, and Brian Richards do not have boilerplate language regarding credentials; nevertheless, these letters in themselves are inadequate to establish an entry requirement. The letters from French General, A.I. New York, Inc., and KA'+B, and A.P.C are irrelevant; they do not discuss the credentials of a fashion designer. Finally, with respect to all of the letters, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Although counsel observes that 100 U.S. colleges or universities offer degrees in fashion design, such an observation has no relevance to these proceedings.

Regarding parallel positions in the petitioner's industry, the

shortcomings of the petitioner's submitted opinion letters have already been discussed.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation, other than the letters, to support the complexity or uniqueness of the proffered 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. The record does not contain any evidence of the petitioner's past hiring practices. And most important, the beneficiary does not possess a bachelor's degree in fashion design; he holds a diploma in fashion design, granted by Kuwasawa Design School upon completion of two years of study. Therefore, the petitioner has not met its burden of proof in establishing a hiring practice. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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. Accordingly, the AAO shall not disturb the director's denial of the petition.

The director also denied the petition because the beneficiary would not be qualified to perform an occupation that would require a baccalaureate degree in fashion design or a related field. However, because the AAO is dismissing the appeal on another ground, it will not discuss the beneficiary's qualifications.

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.