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20 Mass Ave., N.W., Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 04 211 52429 Office: CALIFORNIA SERVICE CENTER Date: **AUG 11 2006**

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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a headwear manufacturer with 10 employees that grosses almost \$4 million annually. The petitioner seeks to employ the beneficiary as a sportswear designer and to classify her 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 basis that the proposed position is not a specialty occupation. On appeal, counsel submits a brief and additional documents.

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 bachelor's or higher degree, but one in a specific specialty that is directly related to the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (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 Form I-129 and employer support letter and the petitioner's response to the director's RFE. According to this evidence, the beneficiary would perform duties that entail determining the needs of the client, the ultimate function for which the design is intended, and its appeal to customers or users; researching the desired design characteristics, such as size, shape, weight, color, materials used, cost, ease of use, fit, and safety; comparing leather, fabrics, and other apparel materials; integrating findings with personal interests, tastes, and knowledge of design to create new designs for clothing; sketching rough and detailed drawings of apparel or accessories and writing specifications, such as color scheme, construction, or material type; drawing patterns for designs using measuring and drawing instruments and computer programs such as Adobe Photoshop, Illustrator, etc. to illustrate the vision for the design and cut patterns and materials according to patterns; after consulting with the client, a creative director, or a product development team, creating detailed designs, using drawings, and a structural model, computer simulations, or a full-scale prototype; constructing samples using proper methods including printing, embroidery, etc.; examining sample garments on and off models; modifying designs to achieve desired effect; attending fashion and fabric shows; reviewing garment magazines and manuals to analyze fashion trends, predictions, and consumer preferences; arranging for showing of sample garments at sales meetings or fashion shows; reviewing catalogs and ordering samples and assisting to make company brochures and catalogs using computer programs to create colorful and proper designed samples. The petitioner stated that a candidate for the proposed position must possess a bachelor's degree or its equivalent in design, textile, clothing or some closely related discipline.

Referring to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director determined that a bachelor's degree in design was not the normal minimum requirement for entry into a position as a fashion designer. The director found that the submitted job postings and an opinion letter from Michelle A. Birch did not establish an industry standard for requiring a bachelor's degree in design for these positions. The director found the petitioner's description of the proposed position to be vague and generic and found that the description provided no further detail as to the uniqueness or complexity of the nature of the position. Finally, the director found that even though the petitioner stated that it always required its fashion designers to hold bachelor's degrees in design or related specialties, this did not establish that the proposed position qualifies as a specialty occupation.

On appeal, counsel agrees that the *Handbook* indicates that some designer positions require only 2-year degrees and some require 4-year degrees. Counsel asserts that the petitioner represents clients that require a designer with a 4-year degree. Counsel further asserts that other fashion designer positions have been found to be specialty occupations by the AAO. Counsel maintains that the Department of Labor's *Dictionary of Occupational Titles (DOT)* gives the position of fashion designer a specific vocational preference (SVP) rating of 7 and shows that it is not unusual for an employer to require a bachelor's degree for this position. Counsel further maintains that the Internet job ads submitted showed that there is an industry-wide requirement for a bachelor's degree in design for similar positions.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proposed position are essentially those of a fashion designer. The 2006-2007 edition of the *Handbook* indicates employers require 2- and 4-year degrees with knowledge about the industry for fashion designer jobs. The petitioner has not, therefore, established that a bachelor's or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the proposed position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petitioner has established, however, that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's or higher degree in a job-related specialty.

The AAO's determination is based upon the totality of the particular evidence submitted in this proceeding. The petitioner's operations, apparel manufacturing, are similar to the employers described in the *Handbook* for fashion designers. The petitioner's proposed position involves design, conceptual formulation, visual design creation, drawing and sketching ability using measuring and drawing instruments, material comparisons, trend analysis, and CAD software and hardware utilization. The AAO notes that the petitioner has several large clients including Collegiate Licensed Headwear and Negro League Baseball Museum, for whom it manufactures licensed products. Taking these factors into consideration, as well as the design and analysis functions described in the record regarding this particular job, the AAO is persuaded that the nature of the specific duties of the proposed position is sufficiently specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in fashion design or a related field. The petitioner has, therefore, satisfied the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The director did not comment on the beneficiary's qualifications to perform the duties of the proposed position as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The record contains an educational evaluation from Global Education Group, Inc (GED). GED concludes that the beneficiary holds the equivalent of U.S. bachelor's degree in fine arts with a major in textiles and clothing. As this is a degree directly related to the pertinent specialty occupation, the beneficiary is qualified to serve in that occupation as required by the regulations.

As always, 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 sustained that burden and the petition shall accordingly be sustained.

**ORDER:** The decision of the director is withdrawn and the appeal is sustained. The petition is approved.