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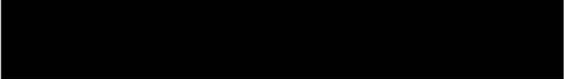
U.S. Citizenship
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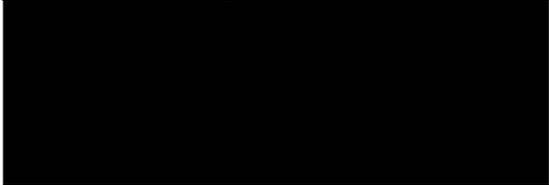


FILE: SRC 05 184 51953 / Office: TEXAS SERVICE CENTER - Date: **OCT 06 2006**

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.

Robert P. Wiemann, Chief
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 in the business of custom fashion design and seeks to employ the beneficiary as a fashion designer. The petitioner 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 stating that the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

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), 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 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) 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 designer. Evidence of the beneficiary's duties includes the Form I-129 petition with attachments and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Plan and prepare haute couture collections for exhibits at fashion shows around the world, such as at New York's fashion week;
- Prepare initial sketches and drawings and their transfer to patterns using computer aided design programs;
- Select haute couture fabrics, including the latest novelty fabrics, high-quality silks, fine wools, cashmeres, cottons, linens, leather suede or other skins or furs;
- Design and color custom-made, one-of-a-kind fabrics according to client needs;
- Prepare cloth prototypes known as toiles using either muslin, which drapes well for flowing designs or by using linen canvas or calico for more structured garments; and
- Prepare haute couture dresses using the finest fabrics and by applying advanced design techniques, such as the use of the 8-shaft loom and other advanced, sewing, ironing, dyeing, weaving, and cutting techniques.

The petitioner requires a bachelor's degree for entry into the proffered position and finds the beneficiary qualified for the position by virtue of her foreign education which has been determined by a credentials

evaluation service to be equivalent to a bachelor's degree in fashion design from an accredited college or university in the United States.

In addition to qualifying the proffered position as a specialty occupation, however, the petitioner must also demonstrate that the qualified nonimmigrant alien is coming temporarily to the United States to perform services in a specialty occupation under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). This, the petitioner has failed to do.

The record indicates that the petitioner will finance his start-up business with a portion of his wages and approximately \$20,000 in real estate equity. The petitioner has a single contract to provide three haute couture dresses for the total sum of \$45,000, and has signed a lease for its business premises. The record also contains the petitioner's business plan. The petitioner seeks to employ the beneficiary as a full-time fashion designer for a period of three years. The petitioner has not, however, provided any other contracts or work orders for the design and sale of additional dresses or other products or accessories. The beneficiary has produced no tax records for its business and indicates that it has no employees. The petitioner has failed to establish that its business operation is a going concern that would gainfully employ an H-1B visa applicant in a specialty occupation for the period of time requested on its Form I-129 petition. Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). Further, the record does not provide sufficient detail about the petitioner's business operations or the nature and scope of the clientele that it ultimately wishes to serve to establish that a four-year degree would be required of its fashion designer. Based upon the foregoing, the petition must be denied.

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 and the appeal shall accordingly be dismissed.

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