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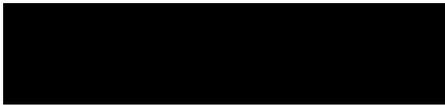
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FILE: WAC 04 004 51086 Office: CALIFORNIA SERVICE CENTER Date: FEB 07 2005

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 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 dismissed. The petition will be denied.

The petitioner is a jewelry manufacturer and exporter. It has employed the beneficiary as a jewelry designer since 2001 and currently seeks to extend his 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 proffered position is not a specialty occupation. On appeal counsel submits a brief arguing that the petition should be approved because (1) the prior petition was approved based on the same facts and law and (2) the duties of the proffered position are so specialized and complex that they require knowledge at the level of a baccalaureate or higher degree, thus satisfying the statutory definition of 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.

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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, the appeal brief, and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 the petitioner described the duties of the jewelry designer position as follows:

Integrate findings and concepts and sketch[] design ideas, present design to client and design committee and discuss need for modification and change. Design product packaging and graphics for advertising. Build simulated model, using hand and power tools and various materials. Design products for custom.

In response to the RFE asking for a more detailed description of the job, the petitioner wrote as follows:

The jewelry designer will be responsible for conceiving and developing jewelry design concepts that meet specifications of either clients of the company or the in-house design committee. The design process shall reflect aesthetic considerations such as appearance and function, and practical factors including materials, manufacturing processes and costs, and market considerations. The designs will develop from preliminary sketches to working drawings and finally, simulated models. The success of these projects will depend on the jewelry designer's knowledge or design principles, aesthetic sensibility, understanding of materials, techniques, and processes. The jewelry designer will also need to stay current on contemporary jewelry design trends through review of jewelry design and trade journals and participation in trade shows and jewelry exhibitions.

The petitioner asserted that a qualified candidate for the job must have a college degree. The record indicates that the beneficiary graduated in 1987 from the Yerevan State Artistic College, in Armenia, with the equivalent of an associate's degree in the specialization of sculptor-performer. From 1992 to 2001 he worked for a jewelry company in Armenia as a modeler-designer. The petitioner's initial petition for the beneficiary's services as a nonimmigrant worker in a specialty occupation was approved by the California Service Center in January 2001, after which the beneficiary entered the United States on an H-1B visa and began working for the petitioner as a jewelry designer in July 2001.

The director found that the jewelry designer position did not qualify as a specialty occupation under the Act. Using the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, 2002-03 edition, as a guide, the director concluded that the duties of the position reflected the duties described in the *Handbook's* entry for jewelers and precious stone and metal workers. As noted by the director, the *Handbook* did not indicate that a bachelor's degree in the field is the normal industry-wide requirement for entry into the occupation of jeweler. The director also determined that the record failed to establish the petitioner normally required applicants for the position to have at minimum a bachelor's degree, or that the duties and responsibility level of the position indicated a complexity or level of authority beyond that normally encountered in the occupational field.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *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. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)). CIS also scrutinizes 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, id.*, at 1165-66.

On appeal counsel asserts that the California Service Center erred in categorizing the proffered position according to the *Handbook* description of a jewelry worker instead of accepting the petitioner's description of the position as a jewelry designer. Counsel refers to the *Handbook* description of jewelers and precious stone and metal workers in its 2002-03 edition, which reads, in pertinent part, as follows:

Jewelers use a variety of common and specialized handtools to design and manufacture new pieces of jewelry; cut, set, and polish stones; and repair or adjust rings, necklaces, bracelets, earrings, and other jewelry

Some jewelers design or make their own jewelry. Following their own designs, or those created by designers or customers, they begin by shaping the metal or by carving wax to make a model for casting the metal. The individual parts then are soldered together, and the jeweler may mount a diamond or other gem, or engrave a design into the metal. In manufacturing, jewelers usually specialize in a single operation. *Mold and model makers* create models or tools for the jewelry that is to be produced. *Assemblers* connect by soldering or fusing the metal and may set stones. *Engravers* may etch designs into the metal, and *polishers* polish the metal and stones to perfect the piece. In small retail stores or repairshops, jewelers may be involved in all aspects of the work.

Counsel contends that the *Handbook* description above bears no similarity to the job duties of the petitioner's jewelry designer. The AAO does not agree. Contrary to counsel's contention, the duties of the petitioner's jewelry designer closely parallel those discussed in the *Handbook* entry for jewelers. For example, the petitioner's jewelry designer "design[s] products for custom . . . develop[ing] from preliminary sketches to working drawings, and finally, simulated models . . . using hand and power tools and various materials." Similarly, jewelers as described in the *Handbook* "use a variety of common and specialized handtools to design and manufacture . . . jewelry. Following their own designs or those [of] customers, they begin by shaping the metal or by carving wax to make a model for casting the metal." Thus, the duties of a jeweler as described in the *Handbook*, like those of the position at issue in this case, involve designing jewelry and manufacturing models thereof with precision tools. Though counsel emphasizes the design aspects of the petitioner's particular position, the record does not demonstrate that they exceed the design components of a jeweler's position as described in the *Handbook*. The AAO finds that the proffered position fits the *Handbook* description of a jeweler.

The *Handbook* goes on to state that "jewelers usually learn their trade in vocational or technical schools, through correspondence courses, or on the job." Though it further states that "[c]olleges and art and design schools also offer programs that can lead to a bachelor's or master's degree of fine arts in jewelry design," it is clear that a bachelor's or higher degree in the specific specialty is not the normal industry-wide minimum requirement for entry into a jeweler's position. According to the *Handbook*, therefore, the

proffered position does not meet the first alternative criterion of a specialty occupation as set forth in 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

Counsel refers to the previously submitted letter from Professor Michael Caldwell of the Seattle Pacific University's art department, dated October 25, 2003, who declared that a baccalaureate or higher degree or its equivalent is now considered the base requirement for entry-level employment as a jewelry artist/designer. Prof. Caldwell cited the essential competencies of a jewelry designer/artist holding a baccalaureate degree, as outlined by the National Association of Schools of Art and Design (NASAD) in its 2002-03 Handbook:

- An understanding of the elements and principles of both two- and three-dimensional design gained through specific coursework in design and through the opportunity to develop solutions to design problems throughout the degree program.
- An understanding of the range of possibilities of the materials used in the making of jewelry/metals art. Implicit in this is, also, an understanding of the limitations of the materials.
- An ability to conceive a project and carry it through to completion. This requires skill in the use of the basic tools, techniques, and processes of this art form and an understanding and appreciation of the aesthetic use of raw material.
- Competence in the design and execution of jewelry and metalwork using a variety of metals and other materials.
- Competence in casting, chasing, raising, enameling, and other metal working processes.
- Basic knowledge of business practices.
- Developed communication skills.
- Knowledge of the place and role of jewelry and fine metalworking in the history of art.
- An understanding of the human factors and relationships that interface with jewelry and fine metalwork.

According to Prof. Caldwell, degrees in this field include bachelor of fine arts in jewelry, bachelor of fine arts in metalsmithing, or bachelor of fine arts in jewelry and metals. The competencies listed by NASAD for jewelry designer/artists with degrees, however, do not appear significantly different from the knowledge and skills of a typical jeweler, as described in the DOL *Handbook*, or the knowledge and skills required to perform the duties of the petitioner's jewelry designer position. While some jewelers may have baccalaureate degrees in the fine arts, the petitioner has not demonstrated that such a degree or its equivalent is the normal minimum requirement for a jewelry designer position or that the duties of such a position cannot be performed by an individual without such a degree. As the *Handbook* explains, there are other avenues to enter the occupation, such as vocational schools and on-the-job training. The AAO determines that Prof. Caldwell's letter does not establish that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for a jewelry designer position, as required to meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

With respect to the second alternative criterion of a specialty occupation, the record contains no evidence that a degree requirement is common to the industry in parallel positions among similar organizations. Nor has the petitioner demonstrated that its particular position is so complex or unique that it can only be performed by an individual with a specialty degree. Accordingly, the position does not qualify as a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

The position does not meet the third alternative criterion to qualify as a specialty occupation because the petitioner has not shown that it normally requires a baccalaureate or higher degree or its equivalent for the subject position. As indicated in the *Handbook*, bachelor's and master's degrees of fine arts in jewelry design are offered by some U.S. colleges and art schools. The beneficiary, who began working as the petitioner's jewelry designer in 2001, has a degree from an Armenian art college in the field of sculptor-performer. According to a credentials evaluation report in the record, that degree is equivalent to an associate's degree in sculpture from a community college in the United States. Since the beneficiary does not have the equivalent of a U.S. baccalaureate or higher degree of fine arts in jewelry design, and there is no evidence of any predecessor in the position who had such a degree, the record does not establish that the petitioner normally requires its jewelry designer to have a baccalaureate or higher degree in the directly related specialty, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3).

Lastly, the position does not meet the fourth alternative criterion to qualify as a specialty occupation, set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not demonstrate that the duties of the petitioner's jewelry designer are so specialized and complex that they require knowledge on the level of a baccalaureate or higher degree in a specific specialty. As previously discussed, the duties of the position are akin to those of a jeweler as described in the *Handbook*, for which vocational training or on-the-job experience is typically required, not a baccalaureate or higher degree.

For the reasons discussed above, the petitioner has failed to establish that the jewelry designer position meets any of the four criteria of a specialty occupation outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). The record does not establish that the beneficiary will be performing services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

On appeal counsel argues that because the California Service Center approved the previous nonimmigrant visa petition on behalf of the beneficiary in 2001, and there has been no significant change in fact or law in the intervening time, the instant petition for an extension of the beneficiary's H-1B classification should be similarly approved. If the prior petition was approved based on evidence substantially similar to the evidence submitted in this proceeding, however, the approval of the prior petition would have been erroneous. CIS is not required to approve petitions when eligibility has not been demonstrated merely because of a prior approval that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *See Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). The record in this proceeding does not establish that the petitioner's jewelry designer position meets the statutory definition of a specialty occupation under section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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