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**U.S. Citizenship  
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Services**

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FILE: WAC 04 259 52070 Office: CALIFORNIA SERVICE CENTER Date: JUN 26 2006

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:

[REDACTED]

**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 sustained.

The petitioner is a fashion design and manufacturing business that 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 § 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. On appeal, counsel submits a brief and additional evidence including an expert opinion and samples of the beneficiary's design work.

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 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 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 I-129 petition; the petitioner's September 10, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: designing garments under the Komarov and Kisca labels; creating original garments, lines of color, and materials that follow fashion trends; creating several prints on a weekly basis for various high-end retailers; creating a "repeat"; adjusting colors and modifying prints to fit Komarov's specific design needs; completing color separation and transmitting the final product onto the fabric; laying out design for line sheets, photo shoots, press releases, and posters; and working closely with buyers. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in fine arts.

The director found that the proffered position was not a specialty occupation because the job is not so complex or unique as to require a bachelor's degree in a specific specialty. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further 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, in part, that the petitioner has satisfied all of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states further that the proposed duties, which entail designing and producing high-priced garments for sale in exclusive shops and department stores, are so complex as to require a bachelor's degree. Counsel submits an expert opinion as supporting documentation.

The AAO disagrees with the director's finding that the proffered position is not a specialty occupation. In this case, the proffered position is that of a fashion designer for the petitioning entity, which is a women's apparel business that designs cutting-edge clothing for major high-end retailers such as Nordstrom and Neiman Marcus. A review of the *Handbook*, 2006-2007 edition, finds that employers seek individuals with a 2-year or 4-year degree who are knowledgeable about textiles, fabrics, ornamentation, and fashion trends.

It is noted that not all fashion designer positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the duties are of such complexity as to require a baccalaureate degree in a specialized and related area and the position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). As such, the petitioner has overcome the director's objections. The beneficiary in this case holds a foreign Bachelor of Fine Arts (BFA) degree with a major in advertising, which has been determined to be the U.S. equivalent of a Bachelor of Fine Arts degree. She also holds a U.S. Associate of Arts degree in fashion design. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations and that the beneficiary is qualified to perform the duties of the specialty occupation.

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. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved.