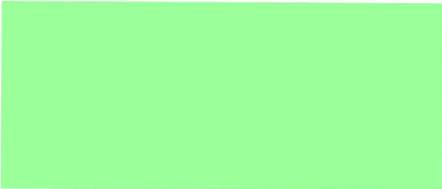


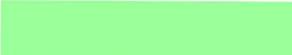
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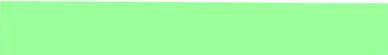
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

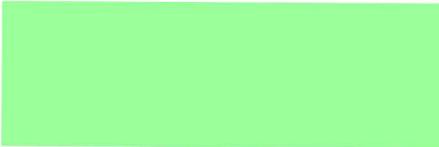


Date: **MAY 06 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting 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.

On the Form I-129 visa petition, the petitioner stated that it is a costume jewelry and accessories distributor with seven employees. To employ the beneficiary in what it designates as a graphic designer position, the petitioner endeavors to classify him 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position and failed to demonstrate that the beneficiary is qualified to work in the proffered position. On appeal, counsel asserted that the director's bases for denial were erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the bases specified in her decision. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The AAO will first address the specialty occupation basis of denial. Although the reasons for denying the petition could have been better articulated or explained, the director's ultimate conclusion that the record is insufficient to substantiate that the petitioner has demonstrated that the proffered position qualifies as a specialty occupation will be affirmed.

To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*Specialty occupation* means an occupation which [(1)] 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 [(2)] 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a graphic designer position, and that it corresponds to Standard Occupational Classification (SOC) code and title 27-1024.00 Graphic Designers from the Dictionary of Occupational Titles (DOT) maintained by the United States Department of Labor (DOL). The LCA further states that the proffered position is a Level I position.

With the visa petition, the petitioner provided a letter, dated September 20, 2010, from the petitioner's president, which states the following duties of the proffered position:

Catalog and Sales Brochure Design:

Design costume jewelry and accessories catalogs and sales brochures using multimedia software.

Internet and Intranet:

Maintain company internet website using multimedia software. Update product images and information on the webpage. Design the user interface for company's intranet system. Design layouts, tables, forms and buttons for the interface using multimedia software.

The petitioner's president also stated that the minimum educational qualification for the proffered position is a bachelor's degree in graphic design, arts, or its equivalent.

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Counsel also provided a diploma from the [REDACTED] an unofficial student academic record from the [REDACTED] and a letter, dated April 20, 2010, from [REDACTED] on [REDACTED] letterhead.

The diploma shows that the beneficiary has a bachelor's degree in Cinema and Television Arts, with an emphasis in film, from the [REDACTED]. The unofficial student academic record shows that the beneficiary has a bachelor's degree in Cinema and Television Arts with an emphasis in film and a minor in art from the same university.

The letter from [REDACTED] indicates that [REDACTED] has a position with the [REDACTED] Art Department pertinent to graphic design, but not what that position is. [REDACTED] stated that the beneficiary has a bachelor's degree in cinematography with a minor in graphic design. [REDACTED] authority and basis for making that statement is unclear, especially as the assertion that the beneficiary has a minor in graphic design is not borne out by either his diploma or by his academic record.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record with independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* At 591-592.

On December 10, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted his own letter, dated January 19, 2011, in which he stated that the proffered position is a "new position," and that in addition to the duties stated in the petitioner's president's September 20, 2010 letter, the duties of the proffered position would "involve custom jewelry design when requested by clients, usually involving new designs or stone color changes." Counsel did not state his basis for asserting that the beneficiary would design custom jewelry in the proffered position. The AAO observes that the petitioner's president indicated that the beneficiary would design catalogs and sales brochures, not jewelry. The AAO further observes that the petitioner stated, on the Form I-129 and in its support letter, that it is a jewelry distributor.

Counsel further stated:

The design process for each jewelry or accessory item involves creating design alternatives. This involves such steps as digital photo sessions. Next is doing the graphic layouts through image manipulation, using image editing software. Samples are created for review by company executive committee. This is followed by

necessary editing and final approval. Customers will also be involved in the review process for custom work.

The design process for catalogs and brochures also involves determining overall page layouts. Webpage organization is also a similar step. The graphic designer determines size and arrangement of jewelry and accessories, styles and sizes, colors and other visual elements for the design. The review and editing steps then take place.

The software mostly used in the petitioning company are Adobe Photoshop and Illustrator.

As to the education required for the proffered position, counsel stated, "A bachelor's degree is the minimum education required for this position." Counsel cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for the proposition that "a bachelor's degree in graphic design is usually required for most entry-level and advanced graphic design positions."

The director denied the petition on March 29, 2011, finding, *inter alia*, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director analyzed the duties of the proffered position as a combination of the duties of a desktop publisher and those of a web administrator.

On appeal, counsel asserts that the duties of the proffered position demonstrate that it is a graphic designer position as described in the *Handbook*. Counsel also states that "the petitioner has informed the USCIS that the beneficiary's duties also involve custom jewelry graphic design . . . ."

The AAO reiterates that the petitioner has never stated that the duties of the proffered position include custom jewelry design. That assertion was made and reiterated by counsel only.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel further asserts on appeal that the proffered position is a graphic designer position, because the duty of designing a jewelry catalog is analogous to analyzing and creating visual solutions to communications problems and the duty of designing costume jewelry is akin to developing overall layout and production designs.<sup>1</sup>

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<sup>1</sup> In speaking of analyzing and creating visual solutions to communications problems and developing overall

The petitioner in this matter provided a list of the beneficiary's proposed duties. As observed above, USCIS in this matter must review the actual duties the beneficiary will be expected to perform to ascertain whether those duties require at least a baccalaureate degree or the equivalent in a specific specialty, as required for classification as a specialty occupation. To accomplish that task in this matter, USCIS must analyze the actual duties in conjunction with the specific project(s) to which the beneficiary will be assigned. To allow otherwise, results in generic descriptions of duties that, while they may appear to comprise the duties of a specialty occupation, are not related to any actual services the beneficiary is expected to provide.

In that regard, the AAO has reviewed the information in the record regarding the petitioner's costume jewelry and accessories distributorship business. The AAO finds that despite the director's request for additional evidence demonstrating that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the record is devoid of substantial documentary evidence as to the specific duties of the proffered position. Given the lack of detail and corroborating evidence, the AAO cannot determine that the proffered position substantially reflects the duties of a graphic designer. While the petitioner submitted a copy of a brochure containing photographs of belts and belt buckles, this single document does not establish the substantive nature of the work to be performed by the beneficiary and that the proffered position qualifies as a specialty occupation. It is noted that the director specifically requested evidence of the petitioner's website, photographs of prototypes, and business plans; however, the petitioner failed to submit the requested evidence.

Thus, the record, as constituted, precludes a determination that the duties of the proffered position are those of a graphic designer. Based on the lack of documentary evidence, the AAO has determined that the petitioner has failed to distinguish the proffered position from a position that does not qualify as a specialty occupation. Thus, there is no basis upon which it can be determined that the petitioner has demonstrated a need for a graphic designer and that the beneficiary will be performing the claimed duties of a graphic designer on a full-time basis. Going on 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Furthermore, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that “[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation.” Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the

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layout and production designs, it appears that counsel was paraphrasing an earlier version of the U.S. Department of Labor's *Occupational Outlook Handbook*.

petition. 8 C.F.R. § 103.2(b)(14). Furthermore, there must be sufficient, corroborating evidence in the record that demonstrates not only actual, non-speculative employment for the beneficiary, but also enough details and specificity to establish that the work the beneficiary will perform for the petitioner will more likely than not be in a specialty occupation. While the petitioner provides a description of the proffered position's claimed duties and one brochure, there is insufficient evidence in the record that the petitioner, a small costume jewelry and accessories distributorship business with seven employees, requires a graphic designer requiring the "theoretical and practical application of a body of highly specialized knowledge" to perform these claimed duties on a full-time basis. *See* INA § 214(i)(1).

USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1) and 103.2(b)(12). The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

As the petitioner has failed to present sufficient, credible evidence of the actual job duties the beneficiary will perform, it has therefore failed to demonstrate that the occupation more likely than not requires a bachelor's or higher degree in a specific specialty or its equivalent as a minimum for entry. *See* INA § 214(i)(1). The petitioner also has not shown through submission of documentary evidence, that it meets any of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Rather, while the petitioner claims that it requires a graphic designer and that it requires a bachelor's degree in graphic design, arts,<sup>2</sup> or its equivalent, it has not credibly shown that it requires a graphic designer and that the work requires such a degree. Thus, the petitioner has not met its burden of proof in this regard, and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

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<sup>2</sup> The AAO observes that if the educational requirement of the proffered position may be satisfied by a bachelor's degree in any of the arts, as well as by a bachelor's degree in graphic design, then the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent. The fields included in the phrase "arts" may be subject to considerable interpretation, but it certainly includes literature and the performing arts. However broadly or narrowly construed, "the arts" do not constitute a specific specialty. That a bachelor's degree in any of the arts would be a sufficient educational qualification for the proffered position is a sufficient reason, in itself, to find that the proffered position does not qualify as a specialty occupation position.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the duties that the petitioner ascribes to the proffered position indicate a need for knowledge of designing catalogs and brochures, maintaining a website, and, in counsel's version of the duties, designing jewelry, but do not establish any particular level of formal education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

A significant portion of the duties attributed to the proffered position appear to be desktop publishing duties, rather than graphic design duties. The petitioner's president stated in his September 20, 2010 letter that the beneficiary would design the petitioner's catalogs and sales brochures, duties that the AAO finds are typically performed by desktop publishers. *See* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Desktop Publishers," <http://www.bls.gov/ooh/office-and-administrative-support/desktop-publishers.htm#tab-2> (last visited April 30, 2013). However, the *Handbook* makes clear that desktop publisher positions do not require a minimum of a bachelor's degree in a specific specialty, or its equivalent. *See id.* at <http://www.bls.gov/ooh/office-and-administrative-support/desktop-publishers.htm#tab-4>.

Further, the petitioner's president stated that the beneficiary would maintain the petitioner's website and design the user interface for its intranet system, which appear to be duties typically performed by webmasters and web designers. *See* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Information Security Analysts, Web Developers, and Computer Network Architects," <http://www.bls.gov/ooh/computer-and-information-technology/information-security-analysts-web-developers-and-computer-network-architects.htm#tab-2> (last visited April 30, 2013). The *Handbook* indicates that webmaster and web designer positions do not require a minimum of a bachelor's degree in a specific specialty, or its equivalent. *See id.* at <http://www.bls.gov/ooh/computer-and-information-technology/information-security-analysts-web-developers-and-computer-network-architects.htm#tab-4>.

To qualify as a specialty occupation, the petitioner must establish, *inter alia*, that the duties of the proffered position require a bachelor's or higher degree in a specific specialty or its equivalent. *See* section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Furthermore and as previously stated by the Service, "The H-1B classification is not intended . . . for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts." 63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998); *but cf.* 8 C.F.R. § 214.2(l)(3)(v)(C) (permitting L-1A managers or executives that are coming to the United States to open a "new office" in the United States to perform some non-qualifying duties during the one year period it takes the new office to meet the "doing business" standard).<sup>3</sup> In other words and in contrast to the L-1A new

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<sup>3</sup> This regulation recognizes that when a new office is first established and commences operations in the United States, the L-1A manager or executive responsible for setting up operations will be engaged in a variety of non-qualifying, day-to-day duties not normally performed by employees at the executive or managerial level and that often the full range of executive or managerial responsibility cannot be performed in that first year. *See* 52 Fed. Reg. 5738, 5740 (Feb. 26, 1987).

office regulations, no provision in the law relevant to H-1B nonimmigrants provides an initial grace period during which non-qualifying specialty occupation duties may be performed.

Nevertheless, while there is no provision in the law for specialty occupations to include non-qualifying duties, the AAO views the performance of duties that are incidental<sup>4</sup> to the primary duties of the proffered position as acceptable when they are unpredictable, intermittent, and of a minor nature. Anything beyond such incidental duties, however, e.g., predictable, recurring, and substantive job responsibilities, must be specialty occupation duties or the proffered position as a whole cannot be approved as a specialty occupation.

For the reasons discussed above, it cannot be found that the proffered position qualifies as a specialty occupation. The AAO therefore affirms the director's finding that the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The remaining basis for the decision of denial is the director's finding that the petitioner had not demonstrated that the beneficiary is qualified to work in a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
  - (i) experience in the specialty equivalent to the completion of such degree, and
  - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

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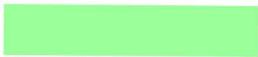
<sup>4</sup> The two definitions of "incidental" in *Webster's New College Dictionary* 573 (Third Edition, Hough Mifflin Harcourt 2008) are "1. Occurring or apt to occur as an unpredictable or minor concomitant . . . [and] 2. Of a minor, casual, or subordinate nature. . . ."

- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree *in the specialty* that the occupation requires. The AAO observes that if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate, not only that the beneficiary has a bachelor's degree or its equivalent, but that the beneficiary has a minimum of a bachelor's degree or its equivalent *in that specific specialty*. See *Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

The petitioner claims in the petition and in the LCA that the proffered position is a graphic design position. Even if the proffered position were found to be a graphic design position and qualified as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in graphic design, the beneficiary would not be qualified for such a position, as the evidence in the record does not demonstrate that the beneficiary has such a degree. As noted above, the beneficiary's [REDACTED] diploma states that the beneficiary was awarded a bachelor's degree in cinema and television arts with an emphasis in film. The unofficial student academic record shows that the beneficiary has a bachelor's degree in Cinema and Television Arts with an emphasis on film and a minor in art from the same university. While the petitioner submitted a letter from [REDACTED] stating that the beneficiary has a bachelor's degree in cinematography with a minor in graphic design, as discussed above, [REDACTED] authority and basis for making that statement is unclear, especially as the assertion that the beneficiary has a minor in graphic design is not borne out by either his diploma or by his academic record.

Further, even if the beneficiary had been shown to have a minor in graphic design, such evidence would be insufficient to show that the beneficiary is qualified for a specialty occupation graphic design position. Section 214(i)(1) of the Act states that a specialty occupation requires attainment of a bachelor's or higher degree in the specific specialty, or its equivalent, as a minimum for entry. No evidence in the record indicates that the beneficiary has a bachelor's degree in graphic design. The



AAO notes that there is generally a significant difference in required credit hours between a major and a minor in a specific field. A minor in graphic design would not satisfy the requirement of a bachelor's or higher degree in the specific specialty, or its equivalent.

For the reasons discussed above, the beneficiary has not been shown to be qualified for the proffered position.

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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