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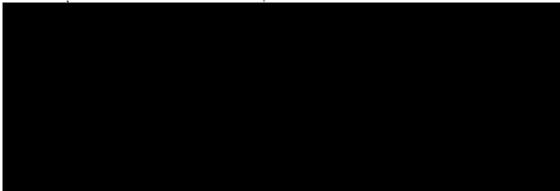
BSP

FILE: SRC 03 041 51708 Office: TEXAS SERVICE CENTER Date: **MAY 01 2007**

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:



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 Director, Texas Service Center, 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 sells its own line of custom cabinetry and provides design and installation services. It seeks to employ the beneficiary as an architectural drafter. Accordingly, 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).

On January 13, 2004, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner asserts that the director incorrectly applied the facts and the law when making her decision. The issue in this matter is whether the petitioner has established that the proffered position is a specialty occupation.

The record contains: (1) the Form I-129 filed November 25, 2002 and supporting documentation; (2) the director's May 23, 2003 request for evidence (RFE); (3) counsel's August 25, 2003 response to the director's RFE; (4) the director's January 13, 2004 denial decision; and, (5) the Form I-290B, counsel's letters regarding the timely filing of the appeal, an excerpt from the petitioner's website, the petitioner's letter dated October 14, 2003, and an undated letter also signed by the petitioner. The AAO reviewed the record in its entirety before issuing its decision.

Preliminarily, the AAO finds that the Form I-290B, Notice of Appeal was received February 17, 2004, or 34 days after the director's decision. However, February 16, 2004 was a federal holiday, thus the Form I-290B was timely filed. The matter is properly before the AAO.

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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner seeks the beneficiary's services as an architectural drafter. In a November 14, 2002 letter appended to the Form I-129 petition, the petitioner stated:

[The beneficiary] is being offered a position as an Architectural Drafter. As such, she will be responsible for the preparation of detailed drawings of Architectural and Structural feature (primarily utilizing AutoCAD). Her other duties will include inputting new specifications as per customer requests.

The position requires a Bachelor's Degree in Architecture, and several years of AutoCAD experience.

On May 23, 2003, the director observed that the position the petitioner described is indicative of an architectural drafter, an occupation that is not a specialty occupation. The director requested, among other things: that the petitioner clarify whether the beneficiary is being hired as a drafter or as an intern/junior architect who will function as a drafter until she has obtained sufficient experience; and that if the beneficiary would be hired as an architectural intern, the petitioner describe the duties of the position in detail and indicate how the beneficiary would progress into an architectural position and its plans for the beneficiary's licensure.

In an August 25, 2003 response, counsel for the petitioner stated that the proffered position is an architectural drafter and that the petitioner requires a university degree for the position, as the petitioner is a world leader in Italian kitchen design. Counsel indicated:

The position requires the skills of an architect in designing modular programs, application of the metric System and the use of AutoCAD programs. Additionally, the architectural Drafter

interact[s] with architects and designers abroad and the company mandates a four year University Degree as the minimum qualifications to hold the position offered.

Counsel noted that the position is not an intern-junior architect. Counsel also referenced an attachment that outlined the internal personnel requirements of the company; however, the record only contains an October 14, 2003 letter from the petitioner. It is not clear if the October 14, 2003 letter is the referenced attachment.

On January 13, 2004, the director denied the petition. The director observed that the petitioner's description of the proffered position corresponded with that of the Department of Labor's *Occupational Outlook Handbook (Handbook)* description of an architectural drafter. The director also noted the *Handbook's* discussion of the educational requirements for an architectural drafter:

Employers prefer applicants who have completed post-secondary school training in drafting, which is offered by technical institutes, community colleges, and some 4-year colleges and universities. Employers are most interested in applicants who have well-developed drafting and mechanical drawing skills; a knowledge of drafting standards, mathematics, science, and engineering technology; and a solid background in computer-aided drafting and design techniques. In addition communication and problem-solving skills are important

The director found that the *Handbook* did not report that a baccalaureate degree or higher is necessary for the position of architectural drafter. The director acknowledged the petitioner's indication that it required a baccalaureate degree for the position but noted that the petitioner had not demonstrated what characteristics or demands of the position would require a degree of specialization. The director determined that although the position might require skill and some knowledge of architecture, the petitioner had not demonstrated that the position requires a baccalaureate degree. The director concluded that the described position is ineligible for classification as a specialty occupation.

On appeal, counsel for the petitioner asserts the director incorrectly applied the facts and the law and that an internationally recognized kitchen design company, which sets standards in the industry, requires a degree for the proffered position. The record also contains the petitioner's October 14, 2003 letter stating that the petitioner required the candidate for the proffered position to hold a bachelor's degree in architecture as well as have many years of experience working with AutoCAD. The petitioner claimed that other personnel in similar positions have the same qualifications. The record also contains an undated letter from the petitioner referencing the October 14, 2003 letter and information from the petitioner's website. The petitioner again states that the position requires a bachelor's degree in architecture in order to be hired and indicates that it is required for other personnel in the beneficiary's position.

Counsel and the petitioner's claims are not persuasive. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations to assist in determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. In the instant matter, as the director noted, the petitioner's description of the duties of its proffered position corresponds to a position of an architectural drafter. Also as the director found, the *Handbook* reports that most employers prefer applicants who have completed post-secondary school training in drafting, training which is offered by technical institutes, community colleges, and some 4-year colleges

and universities. The petitioner has not established that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the proffered position as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner may qualify the proffered position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree. The petitioner has not provided any evidence of an industry-wide educational standard for parallel positions among similar organizations. Neither has the petitioner provided documentary evidence that the occupation is distinguishable, by its unique nature or complexity, from similar but non-degree-requiring positions. The record is simply deficient in this regard. 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)). The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner in this matter asserts that it requires the individual in the proffered position to have a bachelor's degree in architecture. The petitioner indicates that it is because of its international recognition as a leader in kitchen design that it hires architectural design professionals. The petitioner also references the hiring of other individuals in positions similar to the proffered position and claims that those individuals must have the same qualifications.

The AAO routinely reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas in order to understand the petitioner's requirements for a particular position. In this matter, however, although the petitioner references other individuals in similar positions in its employ, it does not provide the names of those employees, descriptions of their job duties, copies of their diplomas, or other evidence that the employees possess degrees in specific disciplines that relate directly to their positions.

Moreover, the AAO finds that the petitioner's desire to employ an individual with a bachelor's degree does not establish that the position is a specialty occupation. The critical element is not the title of the position or 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. *See Defensor v. Meissner*, 201 F. 3d at 384. To interpret the regulations any other way would lead to absurd results. If CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. The petitioner in this matter has failed to submit a description or present any documentary evidence that would establish the necessity of the individual in the proffered position to hold a bachelor's degree or higher in a specific discipline. The petitioner's opinion is insufficient to establish a position as a specialty occupation. Accordingly, the AAO finds that proffered position cannot be established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific field of study and, therefore, establish the proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner's brief description of the duties of the proffered position parallels the description of duties of an architectural drafter. The petitioner has not identified any particular tasks or duties that are so specialized or complex that the knowledge to perform the tasks would require knowledge usually associated with the attainment of a baccalaureate degree in a specific field of study. In this matter, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has not established that the proffered position is a specialty occupation.

The petition will be denied and the appeal dismissed for the above stated reason. 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.

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