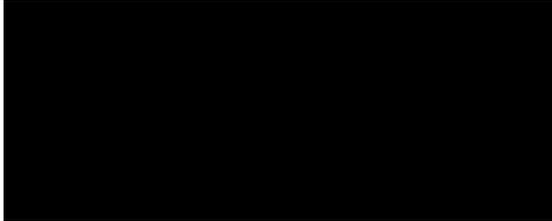


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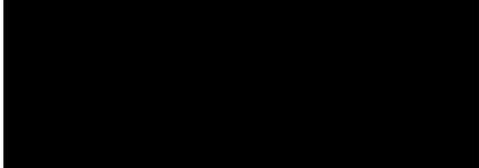
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FILE: WAC 03 063 53725 Office: CALIFORNIA SERVICE CENTER Date **JUN 09 2004**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a general contracting firm. In order to employ the beneficiary as an architect, 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the petitioner had not established that beneficiary is licensed to perform as an architect.

On appeal, counsel asserts that, because the State of Nevada, where the petitioner is licensed and does business, "was willing to allow [the beneficiary] to work underneath the license of [the petitioner], a licensed General Contractor, INS was incorrect for denying the H-1B visa on the basis that [the beneficiary] is unlicensed."

On its Form I-129, the petitioner identified itself as a [REDACTED] and, in his letter that accompanied the Form I-129, counsel represented that the beneficiary would be working under the supervision of an architect who would sign-off on and take legal responsibility for all the beneficiary's work.

In his response to the director's request for a copy of the architectural license of the person who would supervise the beneficiary's architectural work, counsel corrected two items of the petition's information. Counsel's letter of response stated that (1) the petitioner was actually a licensed general contractor, not an architectural firm; and (2) counsel "previously made the mistake of believing" that the beneficiary would be supervised by a licensed architect.

Counsel's letter of reply to the director's request for evidence also enclosed a copy of the petitioner's general contracting license and copies of his correspondence with [REDACTED] the chief investigator of the [REDACTED]

[NSBA], which counsel submitted as conclusive evidence that the beneficiary "can work under their [i.e., the petitioner's] license, as long as the General Contractor takes responsibility for the work."

Counsel's letter to Ms. Ruark posed these three questions:

1. Can [the petitioner] produce a full set of architectural plans to be approved and construct[ed] and come under the exemption provided in [the] Nevada Revised Statutes at sec. 623.330 for work under the contractor license category authorized under N.R.S. 624?
2. Can [the beneficiary] produce the necessary architectural documentation for approval and construction of any building under the direct supervision of [the petitioner], a licensed General Contractor, as an employee until and after [the beneficiary] completes his certification in the USA and Nevada?

3. In plain English, is [the beneficiary] allowed to work for the [the petitioner], even though he has not obtained his license from [REDACTED] as long as he is an employee of [the petitioner], and the [petitioner] who is licensed as a General Contractor, signs off and accepts responsibility for the work as provided in [REDACTED]

Ms. Ruark's letter of response stated:

[REDACTED] states a contractor licensed pursuant to the provisions of Chapter 624 who provides his own drawings for his own construction activities is exempt from the provisions of Chapter 623. This means as long as a General Contractor is appropriately licensed and in good standing with the [REDACTED] they may provide drawings for their own construction activities.

2) A legitimate employee of a Nevada licensed General Contractor may prepare drawings under the supervision of the General Contractor as long as the General Contractor takes responsibility for the work of the employee and the employee does not hold himself/herself out as being an architect or being qualified to provide architecture.

3) Please refer to questions one and two.

On the basis of its review of the entire record of proceeding and all submissions from the filing of the petition through this appeal of the director's decision to deny the petition, the AAO has determined that the director was correct in denying the petition. The petitioner proffered an architect's position, and the evidence of record establishes that the beneficiary cannot be employed as an architect because he lacks an architect's license.

It is noted that the record did not establish that [REDACTED] was authorized to issue an official decision or advisory opinion on behalf of the NSBA as to whether the beneficiary could work as an architect for the petitioner. Also, it is not evident [REDACTED] intended her letter to be taken as the NSBA's official decision or opinion on the petitioner's authorization to employ the beneficiary rather than a general statement advising the petitioner of Nevada's licensing and work authorization requirements. Therefore, in contrast to counsel, the AAO does not recognize [REDACTED] letter as conclusive evidence of the [REDACTED] position on the licensure issue.

Further, neither [REDACTED] comments, nor the statutes to which she cites, state that a person unlicensed as an architect may perform the services of an architect.

The core of [REDACTED] opinion is that, regardless of his or her educational credentials, "[a] legitimate employee of a Nevada licensed General Contractor may *prepare drawings* under the supervision of the General Contractor as long as the General Contractor takes responsibility for the work of the employee and the employee does not hold himself/herself out as being an architect or being qualified to provide

architecture.” [REDACTED] did not advise that a person who lacks an architect’s license may work as an architect, as long as a general contractor supervises that person’s work.

[REDACTED] letter took a very limited position, only endorsing that unlicensed persons may “prepare drawings” for a contractor. The AAO finds that particular task to be less than working as an architect. The AAO has long recognized the *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. In its section on “Drafters,” the 2004-2005 edition of the *Handbook* describes an occupational category, architectural drafters, which is composed of people who are not architects, do not need an architectural degree for their work, and yet “draw architectural and structural features of buildings and other structures” and “may specialize in a type of structure, such as residential or commercial, or in a kind of material used, such as reinforced concrete, masonry, steel, or timber.” It follows that [REDACTED] letter does not even imply that a person who is not licensed as an architect may work as an architect.

The AAO also finds that the provision of the Nevada Revised Statutes (hereinafter, NRS) to [REDACTED] and counsel referred [REDACTED] does not authorize the beneficiary to work as an architect without a license.

NRS 623.330 § 1(d), upon which counsel relies, exempts from the provisions of chapter 623 of the NRS “[a] contractor licensed pursuant to the provisions of chapter 624 of NRS who provides his own drawings for his own construction activities.” The AAO does not dispute that the petitioner is a licensed general contractor, or that NRS 623.330 § 1(d) allows the petitioner to hire whomever it wishes to do its drawings. However, the plain language of NRS 623.330 § 1(d) does *no more* than allow a licensed general contractor to employ an unlicensed person to do its drawings.

Counsel has not cited two statutory provisions which, taken together, prohibit an unlicensed architect from working as an architect for anyone except a licensed architect. NRS 623.360 § 1(c) states that it is unlawful for anyone to “[e]ngage in the practice of architecture or residential design or practice as a registered interior designer without a certificate of registration issued by the Board.” The only persons that Chapter 623 exempts from this prohibition against practicing architecture without a licensee are those who are working for registered architects, and then only under certain conditions: NRS 623.330 § 1(a) exempts from criminal and civil liability for violation of NRS 623.360 § 1(c) only “[a] person engaging in architectural work as an employee of a registered architect or residential designer, if the work does not include responsible charge of design or supervision, or a consultant retained by a registered architect or residential designer.” As this exemption scenario does not fit the evidence of record, the beneficiary cannot work in the proffered position.

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.