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U.S. Citizenship
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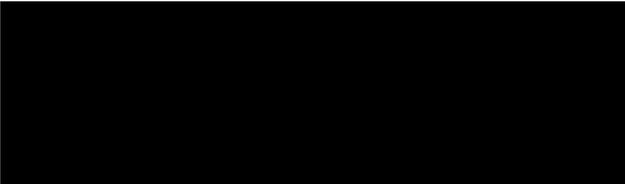
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FILE: WAC 03 216 51958 Office: CALIFORNIA SERVICE CENTER Date: FEB 17 2005

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, Director
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.

The petitioner is a landscape development and construction business that seeks to employ the beneficiary as a landscape 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and the following documentation: a copy of the letter from John Hanna, president of John Hanna & Associates Landscape Architecture; a copy of the email inquiry and response by Justin Sotelo, Enforcement Coordinator, Landscape Architects Technical Committee of the State Department of Consumer Affairs; and copies of the petitioner's contractor's license and its "active license" issued by the State of California Contractors State License Board.

The AAO does not agree with the director's finding that the proffered position is 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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) 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 landscape designer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 9, 2003 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 the following duties:

Landscape Designer for commercial and residential landscape development and construction projects under the close supervision of the General Manager. Observe and measure sites; gather and analyze site data including soil, vegetation, geographic orientation, rock features, drainage, and location of structures, if any, for development of conceptual drawings of landscaping plans. Develop site plans, detailed working drawings, and specifications showing all features of landscape plan. Choose materials for whole composition of exterior decoration. During construction, inspect to insure compliance with landscape specifications and to approve quality of materials and work; communicate between client and construction company concerning landscape features. Other related duties as assigned.

The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in landscape architecture or an equivalent thereof.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The offered position is that of a landscape designer. While the AAO normally consults the *Handbook* for information about the duties and educational requirements of particular occupations, that publication does not contain information about all jobs in the labor market, such as the position offered herein. A search of various Internet sites, including the site of the Roland Tseng College of Extended Learning/California State University Northridge, at <http://exlweb.csun.edu/landscape/index.htm> finds no requirement of a baccalaureate degree for a certificate in landscape design. Furthermore, the record contains no evidence indicating that a baccalaureate or higher degree, or its equivalent, is required for a landscape designer job.

Regarding parallel positions in the petitioner's industry, the petitioner submitted a letter from the business manager of a landscape architecture firm who states, in part, that a bachelor's degree in landscape architecture is required for its landscape designers. There is no evidence, however, to show that this employer is similar to the petitioner, or that the landscape designer position in a landscape architecture firm is parallel to the instant position. As stated by counsel on appeal, "[t]he petitioner does not hold itself out to the public as providing 'landscape architectural services' . . ." Thus, the letter has no relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As the record does not contain any evidence of the petitioner's past hiring practices, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary does not hold a California license to perform the duties of a landscape architect. As related in the discussion above, the proffered position is primarily that of a landscape designer, a position that does not require a baccalaureate degree. In this case, the beneficiary holds a bachelor's degree in landscape architecture conferred by a Filipino institution. The record contains an evaluation from a company that specializes in evaluating academic credentials concluding that the beneficiary possesses the U.S. equivalent of a bachelor's degree in landscape architecture. As such, the beneficiary is qualified to perform the duties of the proffered position. The petition may not be approved, however, because the proffered position is not a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.