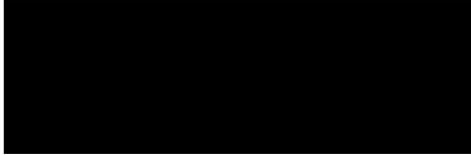


02

U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

PUBLIC COPY



2013 2 9 7:33

File: WAC 01 103 53258 Office: CALIFORNIA SERVICE CENTER Date:

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: SELF-REPRESENTED

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director of the California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter will be remanded to him for further consideration and action.

The petitioner is an interior architecture and design firm with eight employees and a gross annual income of \$1,040,733. It seeks to employ the beneficiary as an interior architect for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), 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.

The director determined that the petitioner had not shown that a bachelor's degree in architecture is normally the minimum requirement for entry into the occupation. The director further determined that the petitioner had not shown that it required a

bachelor's degree in architecture for the position in question. Finally, the director determined the petitioner had not shown that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree in a specific specialty.

On appeal, the petitioner states that the duties of the position are sufficiently specialized and complex to require the services of an individual with a bachelor's degree in architecture. The petitioner further states that it requires a bachelor's degree in architecture for the proffered position.

When determining whether a particular job qualifies as a specialty occupation, Citizenship and Immigration Services (CIS) considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[I]nterior architecture/interior design using AutoCAD, rendering and project manager.

In response to the director's request for additional evidence, the petitioner provided the following, expanded description of the job's duties:

His duties will be developing interior architecture designs, rendering, cad operation, and preparation of certificate documents for construction, project management and furniture design.

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.

In this case, the petitioner has provided sufficient evidence to establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree in a specific specialty. Therefore, the director's objection has been overcome.

The director has not determined whether the beneficiary qualifies to perform services in the specialty occupation. The record shows that the beneficiary holds a bachelor's degree in architecture from a university in the Philippines and is licensed as an architect in that country. He also holds the following professional certificates: Architecture and Urban Landscape, Social Responsibility and Community Design, and 3D Studio MAX. A credentials evaluator found the beneficiary's foreign education equivalent to a Bachelor of Science degree in Architecture from a regionally accredited university in the United States. According to Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition at page 91, all 50 States and the District of Columbia require individuals to be licensed before they can call themselves architects. The petitioner indicates that the beneficiary will work under the direct supervision of a licensed architect. Although the petitioner has provided the licensed architect's name and license number, it has not provided a copy of the architect's license, evidence to show that the licensed architect is an employee of the firm, or an explanation as to exactly how the licensed architect will oversee the beneficiary's work. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, it was held in *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence.

Accordingly, the matter will be remanded to the director to review all relevant issues and make such a determination. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further consideration and action consistent with the foregoing. The director shall issue a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.