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

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



FILE: WAC 02 199 53779 OFFICE: CALIFORNIA SERVICE CENTER

DATE: DEC 22 2003

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)

IN BEHALF OF PETITIONER:



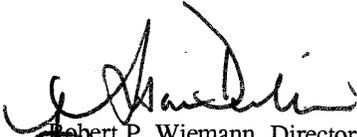
INSTRUCTIONS:

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 Director of the California 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 is in the building design and construction business and employs 23 persons and has a gross annual income of \$8,000,000. It seeks to employ the beneficiary as an interior designer. The director denied the petition because he determined that the beneficiary was not qualified to perform the duties of a specialty occupation.

On appeal, the petitioner submits a brief and copies of previously submitted evidence. The petitioner states, in part, that the beneficiary's education, training, and experience are the equivalent of a bachelor's degree in the specific specialty related to the position; thus, the beneficiary is qualified to perform the duties of the specialty occupation.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation. The director indicated in his decision that the position of interior designer is a specialty occupation, and this point is not in question.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

In the original petition, received at the service center on June 3, 2002, the petitioner described the proposed job duties as follows:

1. Plan, design, and furnish interior environments of residential, commercial, and industrial buildings.
2. Confer with client to determine architectural preferences, purpose and function of environment, budget, types of construction, equipment to be installed, and other factor [sic], which affect planning interior environments.
3. Integrate findings with knowledge of interior design and formulate environmental plan to be practical, esthetic and conducive.
4. Advise clients on interior design factors, such as space planning, layout and utilization of furnishings and equipment, color schemes, and color coordination.
5. Render design ideas in form of paste ups, drawings, or illustrations, estimates material requirements and costs, and present design to clients for approval.
6. Select or design and purchase furnishings, art works, and accessories.
7. Subcontract fabrication, installation, and arrangement of carpeting, fixtures, accessories, draperies, paint and wall coverings, furniture, and related items.

The original filing also includes an evaluation report rendered by the Foundation for International Services, Inc., which considers the beneficiary's training and work experience to amount to the equivalent of a bachelor's degree in interior design from a U.S. university.

On June 7, 2002, the director asked for additional evidence regarding the beneficiary's qualifications and the requirements of the proffered position. In response, the petitioner submitted letters from the beneficiary's previous employers with

information about her job duties, a school transcript, and the job posting for the proffered position. The director found the evidence insufficient to determine that the beneficiary was qualified to perform the duties of an interior designer, a specialty occupation. The director denied the petition on July 24, 2002.

On appeal, counsel states that the beneficiary's combination of education and twelve years of design experience should be considered the equivalent of a bachelor's degree in interior design. Counsel points out that the letters from the beneficiary's prior employers establish that her work experience was in an area related to the specialty required by the proffered position, and that her positions entailed progressively responsible duties.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), the beneficiary may qualify to perform the duties of an interior designer if she has education, specialized training, and/or progressively responsible experience that is equivalent to completion of a U.S. baccalaureate degree in interior design. She must also demonstrate the recognition of her expertise in the field of interior design.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), CIS may determine that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and work experience and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. The record contains one of the forms of evidence of recognition cited in this section in paragraph (5)(ii), namely the beneficiary's allied membership in the American Association of Interior Designers (ASID), a nationally recognized professional association that is known to grant certification or registration to interior designers who have achieved a certain level of competence in the specialty.

The combination of the beneficiary's studies in interior design and her twelve years of experience in the field meet the quantitative criterion relating to equivalence. The letters from the beneficiary's previous employers, however, lack sufficient detail to determine if her prior job experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in interior design. The evidence does not establish that the beneficiary meets the regulatory requirements for qualification to perform a specialty

occupation.

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.