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

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 MASS. 3/A  
425 Eye Street N.W.  
Washington, D.C. 20536

NOV 12 2003



File: LIN 02 233 52586

Office: NEBRASKA SERVICE CENTER

Date:

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)

ON 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 which 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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a company that specializes in the import/export of textiles/building materials with wholesale and retail operations. It has 11 employees and a gross annual income of \$380,000. The petitioner seeks to employ the beneficiary as a staff architect for a period of three years. The director denied the petition on the ground that the beneficiary was not qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief. Counsel asserts that the petitioner "mislabeled" the title of the proffered position as an architect when filing the I-129 position, and that the duties of the position are those of a CADD (computer aided design and drafting) operator not requiring a state license to practice the profession. Alternatively, counsel asserts that: the proffered position does not require a state license as the beneficiary will be working under the supervision of various, but yet to be named, licensed architects; or that the I-129 petition should be approved for a period of one year because the beneficiary need only obtain a social security card in order to obtain a license to practice as an architect in the State of Colorado.

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

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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

field 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.

The duties of the proffered position were detailed with the filing of the I-129 petition:

██████████ (hereinafter ██████████ is a company specializing in the import/export of textiles with wholesale and retail operations. We sell tile and other building materials to the general public through our retail outlet.

We have established as our primary goal to provide customers with the highest quality best value textiles. Many of our valued customers are in the process of choosing materials for their home improvement projects. Before choosing the textile materials, however, many of our customers want to see how the materials selected will appear in their own homes. Therefore, the company aims to provide our clientele with first-class on-site architectural and interior design services.

In order to provide our clientele with first-class on-site architectural and interior design services, and

reach our market potential, we wish to obtain the services of a qualified Staff Architect. Her main responsibility will be the following:

- Provide Computer Aided Design and Drafting (CADD) support to customers in our Retail Centers;
- Proficiency with AutoCAD version 14.0 or 2002 and knowledge of SolidEdge and/or Inventor 3D Software or other 3D programs;
- Prepare architectural floor plans;
- Masterfully produce drawings and renderings to provide clients with the latest 3D computer generated renderings;
- Provide space planning;
- Database structured platforms and 3D design;
- Ability to work with Isometric imaging, and manipulation of variables;
- Document creation, file maintenance, format conversion, and file storage and retrieval;
- Write protect specification schedules as to materials selected; [and]
- Coordinate distribution of textile materials to client.

Subsequent to the filing of the initiating petition, the director requested additional evidence. Specifically, the director asked that the petitioner submit: copies of the beneficiary's college transcripts; and evidence that the beneficiary holds an unrestricted state license, certification, or registration that would permit the beneficiary to fully practice as an architect in the State of Colorado, or evidence that a state license is not required. In response to that request, the petitioner provided copies of the beneficiary's college transcripts. Documentation had previously been provided indicating that the beneficiary possessed the educational equivalent of a Bachelor's Degree in Architecture from an accredited college or university in the United States.

The petitioner further indicated that the beneficiary did not hold a license to practice architecture in Colorado, nor was she required to hold one as the beneficiary would practice her

profession under the supervision of a licensed architect. The petitioner stated that it had contacted three architectural firms for the purpose of retaining one of them to review "the beneficiary's work to ensure compliance with State law and to advise [the] petitioner of the need for a licensed Colorado architect, should that need arise." Neither the petitioner nor counsel has ever provided proof that any such architectural firm has been retained.

The AAO does not simply rely on a position's title when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position, combined with the nature of the petitioning entity's business operations, are factors that the AAO considers. The duties of the offered position contain some functions performed by licensed architects. In the *Occupational Outlook Handbook, 2002-03, (Handbook)*, at 90, the Department of Labor describes, in part, the duties of an architect:

Architects design the overall aesthetic and functional look of buildings and other structures. The design of a building involves far more than its appearance. Buildings also must be functional, safe, and economical, and must suit the needs of the people who use them. Architects take all these things into consideration when they design buildings and other structures.

Architects provide professional services to individuals and organizations planning a construction project. . . . Their duties require specific skills--designing, engineering, managing, supervising, and communicating with clients and builders.

. . . .

After the initial proposals are discussed and accepted, architects develop final construction plans. These plans show the building's appearance and details for its construction. Accompanying these are drawings of the structural system; air-conditioning, heating, and ventilating systems; electrical systems; plumbing site and landscape plans. They also specify the building materials and, in some cases, the interior furnishings. In developing designs, architects follow building codes, zoning laws, fire regulations, and other ordinances . . .

On appeal, counsel states that the duties of the offered position are not as comprehensive as those of an architect. The petitioner clearly states in its letter dated July 8, 2002, however, that it intends to provide its customers "with first-class on-site architectural . . . design services." This

statement, coupled with the position description, leads to the conclusion that the position is that of a "staff architect" as titled by the petitioner in the I-129 petition.

The *Handbook* states that all States and the District of Colombia require individuals to be licensed (registered) before they may call themselves architects or contract to provide architectural services. *Id.* at 91. The position is, therefore, a specialty occupation. 8 C.F.R. § 214.2(h)(4)(ii).

The second and final issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Pursuant to 8 C.F.R. § 214.2(h)(v), if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, that individual must obtain that license prior to approval of the petition in order to be qualified to enter the United States and engage in employment. An exception to the regulation would occur if a temporary license is available, or if a State allows practice under the supervision of licensed senior or supervisory personnel in the occupation. In this instance, counsel asserts, without providing State statutory authority, that Colorado would allow the beneficiary to practice as an architect under the supervision of a licensed architect. The record does not establish, however, that the beneficiary would work under the direction of a licensed architect. Furthermore, the record does not establish that the only obstacle to obtaining a Colorado State Architectural License is the beneficiary's lack of a social security card, as asserted by counsel. The beneficiary is, therefore, not qualified to perform the duties of the specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner, and the petitioner has failed to sustain that burden. Section 291 of the Act, 8 U.S.C. § 1361. The appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed.