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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 02 106 54449 Office: CALIFORNIA SERVICE CENTER Date: OCT 17 2003

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:
[Redacted]

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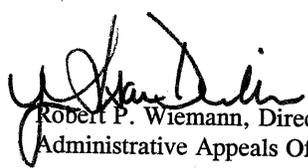
INSTRUCTIONS:

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 Acting Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Woodland, California architectural firm with thirteen employees and a gross annual income of \$930,367. It seeks to employ the beneficiary as a computer-aided drafter for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation. On appeal, the petitioner asserts that a computer-aided drafter is 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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the California Service Center on February 7, 2002, the petitioner described the duties of the proffered position as follows:

- Working with a principal to develop designs and prepare drawings from the schematic design phase through construction documents using AutoCAD;
- Translating sketches through verbal and written instruction for the creation of drawing utilizing AutoCAD;
- Organizing the layout plans, details and sketches with principals and project managers;
- Coordinating the assigned projects by developing with the principal charts and schedules; [and]
- Ensuring with principals and project managers that designs, corrections and specifications are fully and actually accurately translated by staff for transfer into AutoCAD.

On February 8, 2002, the director asked for further information with regard to whether the proffered position was a specialty occupation. In response, the petitioner submitted a letter stating that a degree in architecture is preferred, but is not required. The letter, written by the petitioner's office manager, further stated that the company requires an extensive amount of architectural experience in lieu of a degree.

On February 15, 2002, the director denied the petition. The director noted that the duties of the proffered position are comparable to those of architectural drafters, as described in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* 2002-2003 edition. According to the *Handbook*, a bachelor's degree is not the minimum entry requirement for the field of architectural drafting.

On appeal, the petitioner submits a letter providing additional explanations about the proffered job duties. Herein the petitioner states that the response to the request for evidence was written by the office manager without the approval of the president of the company. The letter submitted on appeal asks CIS to disregard the response to the request for evidence. The petitioner asserts that the proffered position contains some duties similar to those of an architectural drafter, but that it requires additional skills. The petitioner characterizes the proffered position as that of a junior architect, rather than a drafter.

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)

Citizenship and Immigration Services (CIS) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

The basic duties of an architect as outlined in the 2002-2003 edition of the *Handbook* on page 90 include designing, engineering, managing, supervising, and communicating with clients and builders. These duties go beyond those of the proffered position, which is more similar to a drafter, as described in the *Handbook* on page 98. Architectural drafters produce visual representations of a structure's technical details, specifying dimensions, materials to be used, and procedures and processes to be followed. All of the proposed job duties fall within this basic scheme, except perhaps assisting the principal architect in conducting feasibility analyses and submitting proposals. The latter, however, does not transform the position into that of junior architect.

To the extent that the *Handbook* does not indicate that employers of architectural drafters require a bachelor's degree in a specific specialty for entry into the proffered position, it does not appear that a specific bachelor's degree is the minimum requirement for entry into this field. Accordingly, the evidence does not support a finding that a baccalaureate or higher degree or its equivalent in a particular specialty is normally the minimum requirement for entry into the proffered position.

II. 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 - 8 C.F.R. § 214.1(h)(4)(iii)(A)(2)

A. Degree Requirement is Common to the Industry

Factors often considered by CIS when determining the industry standard include: whether the *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."

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 *Handbook's* conclusions about a degree requirement for an architectural drafter's position were discussed in the previous section, and shall not be repeated here. In the instant petition, the petitioner submitted no evidence to establish the industry standard. The petitioner did not submit any documentation that any professional association has made a bachelor's degree a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree or its equivalent in a specific specialty. In the instant petition, the petitioner has submitted no documentation that the proffered position involves duties seen as either so unique or complex that only an individual with a degree in a specific specialty could perform them.

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h) (4) (iii) (A) (3)

There is no information in the record that the petitioner has hired individuals in the proffered position previously; thus, the petitioner has not established this criterion.

IV. 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 - 8 C.F.R. § 214.2(h) (4) (iii) (A) (4)

To date the petitioner has placed no information on the record with regard to the specialized and complex nature of the proffered position. The job description in the original petition contains work duties that are similar to any architectural drafter position. Although the letter submitted on appeal describes the position as junior architect, no further documentation as to any specialized or complex duties within this description has been placed on the record. Without more persuasive evidence as to the specialized or complex nature of the position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h) (4) (iii) (A).

The petitioner has failed to establish that any of the four criteria enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation

within the meaning of the regulations.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.