

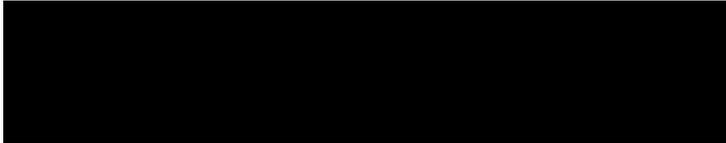
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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 03 146 52228 Office: CALIFORNIA SERVICE CENTER

Aug 03 2004

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 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.

*Mari Johnson*

to

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 sustained. The petition will be approved.

The petitioner operates a landscape architecture business. It seeks to employ the beneficiary as a landscape architect intern, and endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the beneficiary did not have a license to work as a landscape architect in the State of California. On appeal, counsel submits a brief stating that the beneficiary is not required to possess a license as a landscape architect as the beneficiary will be working under the supervision of a licensed landscape architect.

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

Section 101(a)(15)(H)(i)(b) of 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.

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.

The duties of the proffered position are essentially those of a landscape architect intern as defined in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. As noted in the *Handbook*, a bachelor's or master's degree in landscape architecture is usually necessary to enter into the profession of a landscape architect. Additionally, most states (including California) require landscape architects to be licensed or registered. The position does, therefore, qualify as a specialty occupation. The *Handbook* further notes, however, that in States where licensure is required, new hires may be referred to as apprentices or intern landscape architects until they become licensed. Those positions would also require a degree in landscape architecture as apprentices and interns perform virtually the same tasks as landscape architects, but must work under the supervision of a licensed landscape architect. In the director's request for evidence the director asked the petitioner to provide evidence that the beneficiary had a license to practice as a landscape architect in California, or evidence to establish that the beneficiary will work under the supervision of a licensed landscape architect who works for the petitioner. The petitioner complied with the director's request by providing evidence that the beneficiary would work under the supervision of the petitioner's vice president, a licensed landscape architect. Furthermore, the beneficiary possesses a bachelor's degree in Landscape Architecture from California State University. The beneficiary is, therefore, qualified to perform the duties of the proffered position.

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 sustained that burden. Accordingly, the decision of the director will be withdrawn and the appeal will be sustained.

**ORDER:** The decision of the director is withdrawn and the appeal is sustained. The petition is approved.