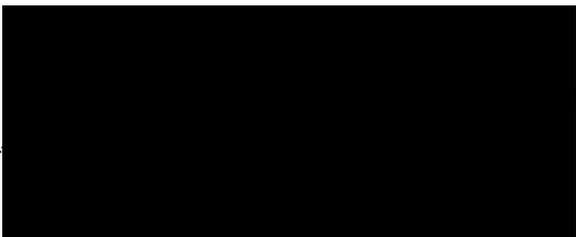




U.S. Citizenship
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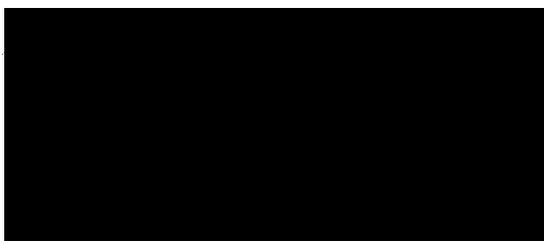


FILE: WAC 02 133 51086 Office: CALIFORNIA SERVICE CENTER Date: AUG 14 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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

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 dismissed. The petition will be denied.

The petitioner is a company that provides architectural and engineering services, with primary expertise in the preparation of architectural plans pertaining to drainage, access, roads, and related structures and utilities. The petitioner seeks to employ the beneficiary as an architectural designer, and so 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 determined that, regardless of its title, the proffered position is an “intern architect” position that requires the exercise of architectural duties. The director also determined that, in light of the evidence of record, the beneficiary is required to either have a California architect’s license or work under the supervision of a California licensed architect. As the evidence of record does not establish that the beneficiary would be working under either condition, the director denied the petition. The regulation at 8 C.F.R. § 214.2(h)(4)(v)(A) states that if an occupation proposed for H classification “requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.”

On appeal, initial counsel¹ maintains that California law does not require that the beneficiary have a California architect license, because he will be working under the control and supervision of a California licensed engineer. The appeal relies on earlier submitted documentation, various parts of California law, and provides an E-mail advisory opinion from an enforcement officer of the California Architects Board (CAB).

The AAO has determined that the director was correct to deny the petition on the regulatory basis that he cited in his decision. In reaching this determination, the AAO reviewed the entirety of the record, including: (1) the petitioner’s Form I-129 and supporting documentation; (2) the director’s RFE; (3) the matters submitted in response to the RFE; (4) the director’s denial letter; and (5) the Form I-290B and initial counsel’s brief with its attachments.

The beneficiary holds a foreign bachelor of science degree that a foreign-degree evaluation service has determined to be equivalent to a U.S. “Bachelor of Architecture” degree. However, the beneficiary is not licensed to practice architecture in California, the location of the proffered position. On the basis of the record it is clear that the beneficiary would be working “under the [petitioner’s] licensed civil engineer and licensed surveyor,” but not under the supervision of a California licensed architect. The brief on appeal and the evidence of record (*see, e.g.*: the duties outlined in the petitioner’s January 25, 2002 letter; and initial counsel’s response to the RFE) make it clear that the proposed duties involve architectural services.

The service center’s review of the petition and its supporting documents led to this succinct RFE:

¹ The record reflects that the petitioner retained new counsel after the appeal was submitted. Hence the references to “initial counsel.”

License: Please submit a copy of the license of the architect under whose supervision the beneficiary will be working.

In response, initial counsel again provided copies of documents attesting to the principal's California licensure as a civil engineer and land surveyor, and averred:

[The beneficiary] is fully qualified for the position offered and there are no legal impediments to the performance of his duties. He will be working under the firm's licensed engineer who will be signing his name to any plan or blueprints. Under [the] California State Business and Professional Code [Code], an individual may be employed by an architectural firm and perform architectural duties without licensure, as long as he does not directly contract for the work under his own responsibility.

Two aspects of the above statement are noted: first, the evidence of record does not establish that the petitioner is an "architectural firm"; second, the AAO was not bound by initial counsel's representation or interpretation of the law. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

After the denial of the petition, the petitioner E-mailed this query to an enforcement officer of the CAB:

I am trying to obtain confirmation that unlicensed foreign architects are eligible to be employed by architectural/construction companies that have a contractor's license and engineering license only. Is the company/owner required to have an architect[']s license[?]

The CAB enforcement officer e-mailed a reply which stated, in part, that "the California Architect's Practice does not require that the owner of a company that employs a foreign architect hold an architect[']s license." The most pertinent part of the reply, however, is this section, which makes it clear that a non-architect may not employ an unlicensed architect to perform any architectural services that are not supervised and controlled by a licensed California architect:

The California Architect's Practice Act, [sic] does not reference or prohibit a foreign architect from working as for an architectural firm or for others. However, any person who is not licensed in California to practice architecture is prohibited from . . . offering or providing architectural services in this state unless they are working under the responsible control of a California licensed architect. . . . California law, Business and Professions Code section 5536(a), specifically prohibits any person who is not licensed to practice architecture under this chapter to practice architecture in California. . . .

It is noted that this e-mail query and response were provided by the petitioner. As this advisory opinion from the CAB enforcement officer is not contradicted by any of the sections of California law submitted into the record, the AAO finds it decisive. Accordingly, as the record establishes that the beneficiary would be providing architectural services without the supervision of a California licensed architect, the director correctly determined

that the beneficiary cannot serve in the proffered position because he does not hold a California architect license. Therefore, the director's decision shall not be disturbed.

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.