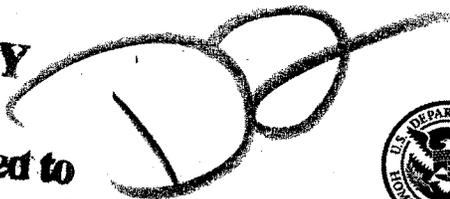


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U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536

U.S. Citizenship  
and Immigration  
Services



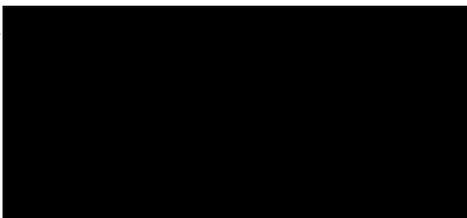
FILE: WAC 02 229 51233 Office: CALIFORNIA SERVICE CENTER Date: FEB 25 2004

IN RE: Petitioner:  
Beneficiary:



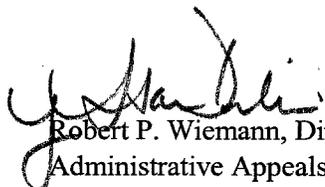
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the 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 The decision of the director will be withdrawn and the petition will be remanded for further consideration.

The petitioner is an architectural firm that seeks to employ the beneficiary as an associate architectural drafter. The petitioner, therefore, endeavors to classify the beneficiary 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief and evidence.

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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an associate architectural drafter. Evidence of the beneficiary's duties includes: the Form I-129; the letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: designing site buildings and architectural structures; preparing detailed project drawings, sketches, building plans, and renderings; discussing objectives, requirements, and the budget of a project such as landscape and irrigation systems design; providing pre-design site inspections, feasibility, environmental impact studies, and design requirements; preparing preliminary drawings and reports for review; developing final construction plans; coordinating materials and specifications and, in some cases, the furnishings; and analyzing the effect of building codes, zoning, regulations, and ordinances. According to the petitioner, the beneficiary will use computer-aided design (CAD) technology. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree or its equivalent in architecture.

Finding that the proffered position was not a specialty occupation, the director stated that the 2000-2001 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), describes the position's duties as reflecting those of an architectural drafter. According to the *Handbook*, candidates seeking employment as architectural drafters usually have at least two years of postsecondary training in drafting and skill and experience using CAD. The director stated that, although employers prefer a baccalaureate level of training, it is not a normal, industry-wide minimum requirement for entry into the occupation. Moreover, the director found that the submitted evidence did not indicate that all or most employers normally require a baccalaureate or higher degree in the field. Last, the director noted that the proposed duties and stated level of responsibility do not indicate complexity or authority beyond what is normally encountered in the field.

On appeal, counsel states that the petitioner established that the proffered position is a specialty occupation. Counsel claims that the petitioner had stated that a bachelor's degree in architecture or its equivalent is normally the minimum requirement for entry into the proffered position. Counsel contends that the director's analysis, based on information in the *Handbook*, is inapplicable to the immediate petition because the director addresses neither the submitted evidence nor the duties of the position and, instead, denied the petition based on the term "drafter" in the position's title. According to counsel, the duties of the proffered position are performed by architects and are not within the ken of drafters. Counsel further avers that none of the duties of the proffered position are under the classification of "drafters" in the *Handbook*, the DOL's *Dictionary of Occupational Titles*, or the DOL's *Standard Occupational Codes*. Counsel contends that the director misinterprets the statute and regulations in his statement that "all" or "most" employers must require a bachelor's or higher degree for the position to qualify as a specialty occupation. According to counsel, the baccalaureate or higher degree must be "normal" for entry into the industry, and this term does not connote "all" or "most." The advertisements, counsel claims, satisfy the "normal" requirement and the three other criteria as well. Counsel declares that the director's statement, that a person without a bachelor's degree should not be able to perform the duties of the occupation, is not a statutory or regulatory requirement. Counsel states that the regulations allow an experienced person whose educational training falls short of a baccalaureate degree to qualify for H-1B classification. Counsel states that with respect to the submitted advertisements, the companies require a bachelor's degree. Last, counsel states that the submitted documentation portrays that the petitioner's present and former associate architectural drafters possess bachelor's degrees or the equivalent.

Upon review of the record, the petitioner has established the first criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO turns to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. 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)). Furthermore, the AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* provides a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within an occupation.

In the response to the request for evidence, the petitioner stated that the beneficiary will assist the landscape architect in coordinating work. The petitioner also stated that most of the firm's work is landscape architecture. Given this context, a review of the *Handbook* reveals that the proffered position's duties are performed by landscape architects. With respect to the training and qualifications for landscape architect positions, the DOL reports that a bachelor's or master's degree in landscape architecture is usually required for entry into the profession. In the year 2000, 46 States required landscape architects to be licensed or registered. New hires may be called "apprentices" or "intern landscape architects" until they become licensed. However, all their work must be performed under the supervision of a licensed landscape architect and all drawings and specifications must be signed and sealed by the licensed landscape architect. Consequently, based on the evidence in the *Handbook*, the proffered position qualifies as a specialty occupation under the first criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO, therefore, will not discuss in this proceeding the other criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The director has not determined whether the beneficiary qualifies to perform services in a specialty occupation. As discussed, the *Handbook* indicates that a person performing the duties of a landscape architect must possess a bachelor's degree in landscape architecture and proper licensure or registration. Limited exceptions apply to licensure. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.