



U.S. Citizenship
and Immigration
Services

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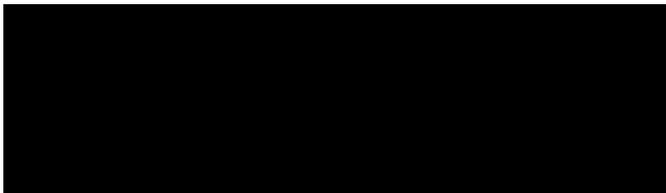


FILE: WAC 03 039 54014 Office: CALIFORNIA SERVICE CENTER Date: 11/14/2003

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

for Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
disclosure of information

DISCUSSION: The service center director denied the nonimmigrant visa petition and 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 engaged in architecture and building design, furniture design, and interior exhibition design. In order to employ the beneficiary as an architectural drafter, the petitioner 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 on the basis that petitioner had failed to establish that the proffered position is a specialty occupation within the meaning of any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director explicitly based his decision, in part, on his findings that the proposed duties comported with the architectural drafter occupation as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, and that the *Handbook* indicates that the architectural drafter occupation does not require a baccalaureate degree.

Counsel contends on appeal that the director has overemphasized the job title, and consequently overlooked the fact that the proffered position is that of an "intermediate occupation" between drafter and licensed architect. Counsel suggests that a more apt job title would be "Intern-Architect" or "Architect/Designer," because, according to counsel, the beneficiary would be performing duties that the State of California allows to be performed under an architect's supervision by an unlicensed person who holds at least a baccalaureate in architecture. The AAO recognizes that there may be intern-architect type positions whose performance genuinely requires a bachelor's degree in a specific specialty. However, the evidence of record does not establish that the proffered position is one of those.

Counsel also contends that the director failed to consider the evidence of record, such as the petitioner's assertion that the three previous persons who were employed at the proffered position held a baccalaureate in architecture or engineering. As discussed later in this decision, the evidence in the record about the petitioner's previous hiring is not persuasive.

Counsel further contends that the principle of *stare decisis* should be applied in favor of the petition: counsel asserts that, because "counsel has secured H-1B approvals for many 'Architectural Drafters' over the last several years," Citizenship and Immigration Services (CIS) "should conform to its previous decisions and should grant this petition." This assertion has no merit. In accordance with 8 C.F.R. 103.3(c), only decisions published as precedent decisions are binding in the administration of the Act. Counsel has cited no such decisions.

In reaching its decision, the AAO considered the entire record of proceeding, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B as annotated by counsel, counsel's brief, and the documentary evidence submitted with the brief.

Upon consideration of the entire record, the AAO has concluded that the director's decision to deny the petition was correct, and that, accordingly, the appeal should be dismissed and the petition denied.

Section 214(i)(1) of 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.

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 with highly specialized knowledge that would be directly applied in the proffered position.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) is satisfied where the evidence establishes that a baccalaureate or higher degree, or the equivalent, in a specific specialty is the normal minimum requirement for entry into the particular position. The evidence of record here does not reach this threshold.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations, and the AAO carefully considered how differently the director and counsel applied it to the evidence of record. While the director discerned a position that is strictly drafting, counsel asserts that the beneficiary would actually work above that level, on duties that can only be performed by a person with at least a baccalaureate in architecture. In fact, counsel maintains that the duties described in the record are of the type of employment that states usually require of architectural candidates before they can take the licensing exam.

According to the letter which the petitioner submitted with the Form I-129, the beneficiary would work under the direct supervision of "the Project Manager", and, under that supervision, would perform an assisting role in "preparing various designs and working drawings of architectural projects and furniture units, used for construction or manufacturing purposes, according to dimensional specifications"; "generating drawing packages"; and "the generation of design proposals in the form of sketches and models during the schematic phase of a project." The beneficiary would also "assist the principal to develop the project design and to prepare client meetings and presentations." Under the project manager's supervision, the beneficiary would also "create preliminary and final drawings for clients and building permit approval using both conventional draft techniques and devices, such as drawing board/T-square, and also computer-assisted design/drafting equipment."

The drawings would be “assembled from sketches or notes provided by the Project Manager.” The drawing packages with which the beneficiary would assist would “include calculations, dimensions, material libraries, specification of various related parts, and information such as base plans and elevations, sections, details, and several views of residential buildings, furniture systems, exhibition designs, and custom architectural details.” Also according to this letter submitted with the Form I-129, the beneficiary would “perform design tasks such as assisting with the generation of design proposals in the form of sketches and models during the schematic phase of a project, and will assist the principal to develop the project design to prepare client meetings and presentations.”

In response to the RFE, the petitioner submitted a letter that further explained the requirements of the proposed duties and divided them into three time-expenditure categories, namely, “executing drawings” (80%), “executing proposals during the schematic design phase” (10%); and the “revision process,” during which the architectural drafter works with the Project Manager to revise and refine the drawings as the client’s wishes are further explored and as changes arise.” (10%) However, neither this letter nor any of the evidence of record establishes that the proffered position is one which normally requires at least a baccalaureate or higher degree, or the equivalent, in architecture or any other specific specialty.

The director was correct in determining that the proposed duties comport with those of the architectural designer occupation as described in the *Handbook*, as is evident from this excerpt from this excerpt from the 2004-2005 edition of the *Handbook*:

Drafters prepare technical drawings and plans used by production and construction workers to build everything from manufactured products, such as toys, toasters, industrial machinery, and spacecraft, to structures, such as houses, office buildings, and oil and gas pipelines. Their drawings provide visual guidelines, show the technical details of the products and structures, and specify dimensions, materials, and procedures. Drafters fill in technical details, using drawings, rough sketches, specifications, codes, and calculations previously made by engineers, surveyors, architects, or scientists. For example, they use their knowledge of standardized building techniques to draw in the details of a structure. Some drafters use their knowledge of engineering and manufacturing theory and standards to draw the parts of a machine in order to determine design elements, such as the numbers and kinds of fasteners needed to assemble the machine. Drafters use technical handbooks, tables, calculators, and computers to complete their work.

Traditionally, drafters sat at drawing boards and used pencils, pens, compasses, protractors, triangles, and other drafting devices to prepare a drawing manually. Most drafters now use computer-aided design and drafting (CADD) systems to prepare drawings. Consequently, some drafters are referred to as CADD operators. CADD systems employ computer workstations to create a drawing on a video screen. The drawings are stored electronically to facilitate revisions and create duplications easily. These systems also permit drafters to quickly prepare variations of a design. Although drafters use CADD extensively, it is only a tool: Persons who produce technical drawings with CADD still function as drafters and need the knowledge of traditional drafters, in addition to CADD skills. Despite the near-universal use of CADD systems, manual drafting and sketching still is used in certain applications.

Drafting work has many specialties, and titles may denote a particular discipline of design or drafting

Architectural drafters draw architectural and structural features of buildings and other structures. These workers may specialize in a type of structure, such as residential or commercial, or in a kind of material used, such as reinforced concrete, masonry, steel, or timber.

The director also was correct in recognizing that the *Handbook* indicates that architectural drafting does not normally require a baccalaureate degree in architecture or any other specific specialty.

The matters presented on appeal are not sufficient to alter the validity of these findings. As presently constituted, the evidence of record provides no specific details that would establish any of the proposed duties as exceeding those of an architectural drafter as described in the *Handbook*.

As indicated in the following excerpt from counsel's brief, the thrust of the appeal is that the proffered position exceeds an architectural drafter's duties and capabilities, because the beneficiary would be performing tasks that require the specialized knowledge peculiar to a degreed but unlicensed architect:

In its denial, [CIS] states that the actual duties are determinative, but fails to include any analysis of which duties fall within a specialty occupation, and which do not. We submit that based on the guidance of the California State Architecture Board [CSAB], the American Institute of Architects [AIA], and the California EDD [Employment Development Department] in addition to the [*Handbook*], preparation of drawings in the schematic and design development phase is considered to be well beyond the duties of a drafter, and therefore constitute the duties in a specialty occupation. These duties were included in the original petition and the response to the Service's request for additional evidence. [Underlining in the original.]

Counsel quotes a paragraph in the section on architects in the 2002-2003 edition of the *Handbook* that indicates that, prior to licensing as architects, persons who have at least a baccalaureate degree in architecture must work in entry-level, intern-architect positions for a training period which generally lasts three years. Among typical duties the *Handbook* cites "preparing construction drawings on CADD, or assisting in the design of one part of a project." This section is not persuasive. Even if it may take a baccalaureate degree in architecture to gain an intern-architect position, it does not follow that every training task in which an intern-architect engages -- such as architectural drafting - requires at least a baccalaureate degree, or the equivalent, in architecture. In fact, the *Handbook* conclusively establishes that architectural drawing does not require a baccalaureate at all. The fact that an intern-architect may perform such a task does not elevate it to one that requires a bachelor's degree or the equivalent in a specific specialty.

Counsel also asserts that the proposed duties "are entirely consistent with the job duties of a licensed architect, as defined by the California Architects Practice Act, California Business and Professions Code, Chapter 3, Division 3, Article 1, Section 5500," which states, in part, that architect's professional services may include, among other specified functions, "[p]lanning, schematic and preliminary studies, designs, working drawings, or specifications." It does not follow, however, that only a baccalaureate or higher degree, or equivalent, in architecture can equip a person to produce architectural drawings, or that only architect-degreed persons engage in architectural drawing. The *Handbook's* information about architectural drafters attests to this fact.

Counsel also quotes from the California EDD's California Occupational Guide on architects for the proposition that architects in small firms are likely to perform several functions, including, designer, drafter, estimator, construction overseer. That an architect in a small firm may take on architectural drafting duties does not mean that those duties must require an architect's degree. In fact, the *Handbook* indicates that they do not. In the same vein, review of the *Handbook's* information on construction cost-estimators indicates that one can work in that field without a bachelor's degree in architecture or any other specific specialty.

The AIA membership material is not relevant. The AIA compensation report information is relevant but does not provide significant support to counsel's position. The report's references to several types of "architect positions" that are held by unlicensed persons who have at least a bachelor's degree in architecture - including architect/designers and interns - indicates that there are positions which require at least a bachelor's degree in architecture but do not require a license in architecture. However, the AIA compensation report material also lists the position of drafter, and other architecture-related positions, but without any reference to a degree requirement. Thus, it is evident that the AIA compensation report material uses the term "architect positions" in a broad sense that encompasses positions which do and do not require an architectural degree. Because the report's information about the positions is too skeletal to establish to which of its occupational categories the proffered position would belong, the report's has insignificant evidentiary weight.

Because the evidence of record does not demonstrate that a baccalaureate or higher degree, or the equivalent, in a specific specialty is the normal minimum requirement for entry into proffered position, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the petitioner has not presented evidence that would qualify the proffered position under either of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence to satisfy the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) by establishing that a specific-specialty degree requirement is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by CIS 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." See *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)).

As already discussed, the evidence of record does not establish the proffered position as one for which the *Handbook* indicates a requirement for a degree in a specific specialty.

There is a letter from the owner and principal of a competitive firm which states, in pertinent part:

. . . I do agree and confirm that any architectural drafter who would qualify to work with me at [his firm] would require a Bachelor's [D]egree in Architecture to fulfill the basic requirements of "architectural drafter." This is due to the nature of the specific technical tasks and CAD-related

drawing skills we as architects use to communicate design concepts to [c]lients and building professionals alike.

The AAO accorded little weight to this letter for two reasons. First, the author provided no details about “the nature of the specific technical tasks” which he cited as one of the two reasons for his opinion. He therefore provided no means to gauge the validity of his evaluation of those tasks. Second, the author’s implication that only architecture-degreed persons possess CAD-related architectural drawing skills is inconsistent with the *Handbook’s* information about architectural drafters. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Finally, the copies of job vacancy announcements from other firms that were submitted into the record are insignificant. They are too few to establish an industry-wide hiring requirement. Also, they include some positions whose duties (such as developing design architecture, developing design options, and field surveys) exceed those described in the record for proffered position.

The AAO also found that the evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that “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.” The evidence of record does not indicate that the beneficiary’s work would be either so unique or so technically demanding as to require a bachelor’s or higher degree in a specific specialty.

Next, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position – is not met. It is noted that the petitioner’s letter of reply to the RFE listed the names and architecture or engineering degrees of the three previous holders of the proffered position. The evidence of record, however, however, does not establish that the petitioner’s requirement for an architecture or engineering degree is more than perfunctory. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner’s self-imposed employment requirements, then any alien with a bachelor’s degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The evidence of record fails to establish

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and “might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition.” *See id.* at 387.

that the proposed duties are any more specialized and complex than those of the architectural drafting occupation, and, as the *Handbook* indicates, the duties of that occupation are not usually associated with the attainment of a baccalaureate or higher degree.

As the petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO shall not disturb the director's denial of the petition.

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.