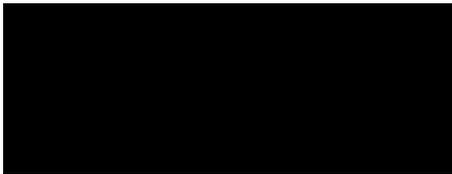




U.S. Citizenship  
and Immigration  
Services

D2



FILE: WAC 02 275 50943 Office: CALIFORNIA SERVICE CENTER Date: OCT 22 2004

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]

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

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**DISCUSSION:** The Director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a company engaged in the installation, servicing, and repair of heating, ventilation, and air conditioning (HVAC) systems that seeks to employ the beneficiary as a mechanical engineer. 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(H)(i)(b).

The director denied the petition because the beneficiary did not hold a license to practice mechanical engineering in the state of California. On appeal, counsel contends that California law allows the beneficiary to work for an HVAC contractor without an engineering license. Counsel submits the printout of an electronic mail message from the manager of the examination administration unit of the California Board for Professional Engineers and Land Surveyors, who indicated that an individual could practice mechanical engineering for an HVAC contractor without a license, as long as that contractor installed the systems it designed.

With regard to licensure for H classification, 8 C.F.R. § 214.2 (h)(4)(v), states the following:

(A) *General.* If an occupation 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.

(B) *Temporary licensure.* If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

(C) *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

The state of California generally requires individuals who practice mechanical engineering to obtain the appropriate state license. There are several exceptions, however, one of which is for certain contractors who perform mechanical engineering work as part of their own installation process; that is, such contractors are not allowed to perform mechanical engineering work for other companies. California Business and Professions Code § 6737.3. It is important to note that, according to section 6732, an individual performing engineering work for a contractor under the noted exception is not allowed to use the title "mechanical

engineer” under any circumstances and may not stamp any plans or other documents with the seal of a professional engineer.

The information on the record indicates that the petitioner, an HVAC contractor, designs heating and cooling systems; thus, the beneficiary could perform mechanical engineering work for the petitioner without a California license, as long as the petitioner’s projects are also installed by the petitioner, and the beneficiary never uses the title “mechanical engineer.” The beneficiary could not install projects for another company or be contracted to perform work as a mechanical engineer outside the petitioner’s company in violation of the California code. This information overcomes the director’s reason for denial.

In his decision, the director made no finding regarding whether the proffered position was a specialty occupation or whether the beneficiary would be qualified to perform the duties of a specialty occupation. The director must render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. The director should consider whether the duties described will be limited to design and installation for the petitioner, as required by the California code, whether the beneficiary has the required education or its equivalent, and whether the position is a specialty occupation. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director’s March 14, 2003 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.