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U.S. Citizenship  
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Services

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FILE: WAC 03 250 51827 Office: CALIFORNIA SERVICE CENTER Date: AUG 24 2005

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:



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 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 is a design studio that seeks to employ the beneficiary as an architectural designer. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a letter.

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 architectural designer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 4, 2003 letter in support of the petition; 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: reviewing proposals submitted by clients for new construction or renovation; evaluating the design elements requested by the client and/or required by the location; researching building codes and materials; writing specifications for building materials, installation criteria, the quality of finishes and other related details; preparing design documents, which will be the basis upon which more detailed plans can be prepared for submission to the client; preparing designs as part of a competitive bidding process; utilizing computer aided graphics programs; and working with the client to refine the design to a final work plan and implementing changes as required. The petitioner indicated that a qualified candidate for the position would possess a bachelor's degree in architecture.

The director found that the proffered position was not a specialty occupation because the duties are those of an interior designer, which the director stated does not require a bachelor's degree in a specific specialty.

On appeal, counsel asserts that the director initially requested evidence to establish that the beneficiary had a degree in architecture and that she was licensed in California, presumably believing that she would be working in the field of architecture, but then denied the petition based on the position being that of an interior designer. Counsel states that the position is an architectural designer, not an interior designer. Counsel also states that the director was incorrect in claiming that no additional evidence was provided regarding the specific duties of the proffered position in response to the director's request.

The AAO agrees with counsel that the proffered position is not an interior designer, and that the director was incorrect in classifying it as such.

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

The AAO turns first 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 these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. As noted, the AAO does not concur with the director's determination that the position is that of an interior designer. While the *Handbook* does not include a specific entry for architectural designers,

in the general entry for designers, the *Handbook* states that a bachelor's degree is required for most design positions, other than floral design and visual merchandising. The duties of the proffered position are clearly within the ambit of the *Handbook's* description for designers. In addition, the record includes a letter from a licensed architect who is the associate chair of the department of architecture at Woodbury University. She stated that design firms such as the petitioner's often employ unlicensed individuals who hold bachelor's degrees in architecture to work as designers. The petitioner has, thus, established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The beneficiary has a bachelor's degree in architecture from Peru, which an evaluator from Globe Language Services, Inc. determined to be equivalent to a bachelor's degree in architecture from a United States university.

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 appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved.