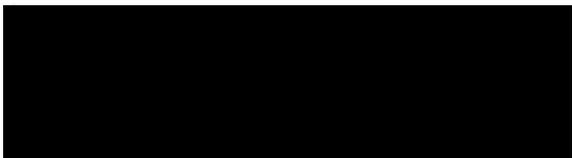


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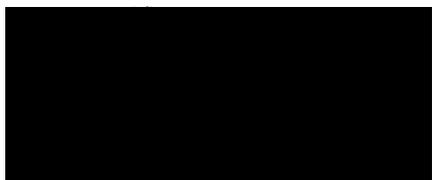
MAY 20 2005

FILE: WAC 03 161 54625 Office: CALIFORNIA SERVICE CENTER Date:

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.

A handwritten signature in black ink, appearing to be "Robert P. Wiemann".

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 sustained. The petition will be approved.

The petitioner is an architectural firm that seeks to employ the beneficiary as an 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 additional evidence.

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.

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 drafter. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail designing and producing comprehensive drawings and construction documents using computer aided drafting (CAD). The petitioner stated that the beneficiary's possession of a bachelor's degree in architecture is the requisite educational background for the proposed position.

Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the proffered position's duties are performed by an architectural drafter, an occupation that does not require a specific baccalaureate degree. The director also stated that CIS does not cite to the *Occupational Information Network (O\*Net)*. On appeal, counsel states that the proffered position is performed by an architect, a specialty occupation.

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation.

As described by the petitioner, the beneficiary's specific duties are performed by an architect as depicted in the *Handbook*. And as such, a bachelor's degree in architecture is required for the proposed position.

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

The *Handbook*, a resource that the AAO routinely consults to determine the education, training, and experience normally required to enter into an occupation, reports that all states and the District of Columbia require a person to be licensed before the person can provide architectural services. The *Handbook* indicates that architectural school graduates work in the field even though they are not licensed; however, a licensed architect is required to take legal responsibility for all work.

The beneficiary's degree in architecture is determined by Education International to be the equivalent to a bachelor's degree in architecture from an accredited institution in the United States. The beneficiary does not hold a license to practice architecture in California. The petitioner is a small architectural firm. The offer of employment tendered to the beneficiary is from [REDACTED] who indicates in his April 28, 2003 letter that he is an architect. Since [REDACTED] a licensed architect who can take legal responsibility for the beneficiary's work, the beneficiary would be allowed to work in the field even though she is not licensed. Thus, the beneficiary is qualified for the proposed position.

**ORDER:** The appeal is sustained. The petition is approved.