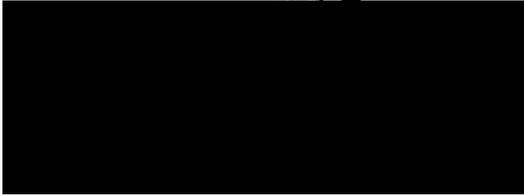


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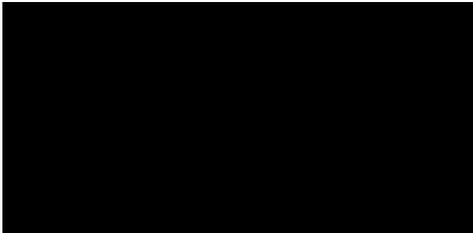
DZ

FILE: WAC 03 216 51958 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 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 Director of the California Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decisions of the AAO and the director shall be withdrawn. The petition will be approved.

The petitioner is landscape development and construction business that seeks to employ the beneficiary as a landscape 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 found that the proposed position is similar to a landscape architect, a specialty occupation, but concluded that the beneficiary is not qualified for the proposed position. The petitioner filed an appeal. The AAO dismissed the appeal, finding that the proposed position did not qualify as a specialty occupation, and that the beneficiary was qualified to perform the proposed position.

On motion to reopen or reconsider, counsel states that the AAO's decision to draw a distinction between a landscape designer and landscape architect is arbitrary and capricious and contrary to the director's decision. Referring to submitted job announcements, counsel states that they show that the duties and educational requirements of a landscape designer and landscape architect are identical. The primary distinction between the two occupations, counsel states, is job title and the requirement of a license for a landscape architect. Counsel states that the record reflects that licensure is not required for the proposed position. According to counsel, the AAO failed to consider the submitted letter from a major competitor verifying the requirement of a bachelor's degree for a landscape designer. Counsel states that the AAO erroneously relied on evidence outside the record, a website of a Los Angeles university, to reach the conclusion that the proposed position does not require a baccalaureate degree in landscape design. Counsel asserts that programs that are offered by a university do not establish the hiring requirements of employers. Counsel states that since state law and regulations allow for a landscape architect to work without a license for a licensed landscape contractor, no license is required for the proposed position.

The AAO grants the motion to reopen or reconsider.

The AAO will first address whether the proposed position is a specialty occupation under the Act.

The petitioner seeks the beneficiary's services as a landscape designer. A July 9, 2003 letter from the petitioner states that the beneficiary would perform duties that entail providing services as a landscape designer for commercial and residential landscape development and construction projects under the close supervision of the general manager. Duties include observing and measuring sites; gathering and analyzing site data including soil, vegetation, geographic orientation, rock features, drainage, and location of structures, if any, for development of conceptual drawings of landscaping plans; developing site plans, detailed working drawings, and specifications showing all features of the landscape plan; choosing material for the whole composition of exterior decoration; inspecting to ensure compliance with landscape specifications and approving quality of materials and work; communicating between the client and the construction company concerning landscape features; and performing related duties. The petitioner requires a bachelor's degree in landscape architecture or an equivalent combination of education and experience.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

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 record contains an excerpt from the California Business and Professions Code and the *Professional and Business License Handbook*. The excerpt from the *Professional and Business License Handbook* states that a landscape architect requires licensure and as does any person who uses the title "landscape architect" or does the work of a landscape architect as defined in Division 3, Chapter 3.5 of the Business and Professions Code. The sections of the Business and Professions Code, Division 3, Chapter 3.5 that are contained in the record are Business and Professions Code section 5615<sup>1</sup>, section 5640<sup>2</sup>, section 5641<sup>3</sup>, section 5642<sup>4</sup>, and section

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<sup>1</sup> The code section defines a landscape architect and the scope of a landscape architect's services.

<sup>2</sup> The code section states that it is a misdemeanor to engage in the practice of landscape architecture or use the title or term "landscape architect", "landscape architecture," "landscape architectural," or any other titles, words, or abbreviations that would imply or indicate that the person is a landscape architect as defined in Section 5615.

<sup>3</sup> The code section states, in part, that a person is not prohibited from making plans or drawing for the selection, placement, or use of plants when the execution of such plans or drawings does not affect the public health, safety and welfare.

<sup>4</sup> The code section states that a landscape architect can form a partnership, firm, or corporation with, or employ, persons who are not landscape architects if the signature, date, and license number of the landscape architect appears on all instruments of service; and that no partnership, firm, or corporation shall engage in

5644<sup>5</sup>. The e-mail correspondence from the enforcement coordinator with the Landscape Architects Technical Committee reads:

I see no problem with the [petitioner] hiring an individual as a landscape designer and requiring a degree in landscape architecture.

...

For design/build projects, a C-27 licensed landscape contractor [which is the petitioner's classification] may "design systems or facilities for work to be performed and supervised by that contractor" (B&P Code section 7027.5)

If the firm was to only offer design services (and no construction/installation) on a particular project, it would be required to comply with B&P Code section 5641.

...

In other words, design (only) services that exceed planting plans (i.e., plans that provide specifications and/or construction details for hardscape, overhead structures, etc.) begin to enter a landscape architect's scope of work.

The website ([www.latc.dca.c.gov](http://www.latc.dca.c.gov)) of the Landscape Architects Technical Committee conveys:

Landscape designers are not licensed or regulated by the State of California and are limited to preparing plans, drawings, and specifications for the selection, placement, or use of plants or drawings for the conceptual design and placement of tangible objects and landscape features for single family dwellings (BPC 5641). They are not required to obtain educational and/or training background.

The AAO notes that the California Code of Regulations, Division 8, Title 16, Article 3. Classification C27 – Landscaping Contractor, states:

A landscape contractor constructs, maintains, repairs, installs, or subcontracts the development of landscape systems and facilities for public and private gardens and other

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the practice of landscape architecture unless the work is under the immediate and responsible direction of a licensee of the board.

<sup>5</sup> The code section states that any person who holds a valid state license or other authority that authorizes the person to engage in a business or occupation, insofar as the person engages in a professional, occupation, or business activity within the scope of that license or other authority, shall not be required to be licensed under this chapter.

areas which are designed to aesthetically, architecturally, horticulturally, or functionally improve the grounds within or surrounding a structure or a tract or plot of land. In connection therewith, a landscape contractor prepares and grades plots and areas of land for the installation of any architectural, horticultural and decorative treatment or arrangement.

The record contains a letter from Mr. [REDACTED] of [REDACTED] Associates, a landscape architecture firm, that states that landscape contractors can do design work that affects the health and safety and welfare of the public if that landscape contractor has the contract to do the installation work. The letter also indicates a designer need not be a licensed landscape architect to design individual single-family residential developments consisting of one household only.

Also contained in the record is the petitioner's company brochure, which reflects that the petitioner provides hardscape, softscape, ground works, and utility services for commercial, industrial, public works, school, and residential landscape projects.

Although the proposed position is not titled "landscape architect," the AAO finds that the proposed position is similar to that of a landscape architect. The enforcement coordinator with the Landscape Architects Technical Committee stated that if design services involve more than "planting plans," the proposed duties enter the scope of duties of the landscape architect; and the website of the Landscape Architects Technical Committee conveys that section 5641 of the California Business and Professions Code states that landscape designers are not licensed or regulated and are "limited to preparing plans, drawings, and specifications for the selection, placement, or use of plants or drawings for the conceptual design and placement of tangible objects and landscape features for single family dwellings." Here, the beneficiary will work on commercial and residential projects and the proposed duties seem to involve more than "planting plans." Thus, the proposed position is similar to a landscape architect, which qualifies as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO notes that a landscape architect requires licensure under California law. The *Handbook* indicates that those with landscape architecture training also qualify for jobs closely related to landscape architecture, and may after gaining some experience, become landscape consultants.

The AAO will now consider whether the beneficiary is qualified for the proposed position.

The beneficiary holds a baccalaureate degree from a Filipino institution that has been determined by a foreign credentials evaluator to be equivalent to a degree in landscape architecture from an accredited institution in the United States. The petitioner is a C-27 licensed landscape contractor. The e-mail from the enforcement coordinator indicated that for design/build projects, a C-27 licensed landscape contractor may "design systems or facilities for work to be performed and supervised by that contractor." The letter from Mr. Hanna also states that landscape contractors can do design work that affects the health and safety and welfare of the public, provided that the landscape contractor has the contract to do the installation work as well. Based on this evidence, when the petitioner provides design and construction services for a project, the beneficiary is not required to possess licensure as a landscape architect while performing the proposed duties as an employee of the petitioner. The AAO notes that the enforcement coordinator stated that if the petitioner

provides only design services - without construction/installation - of a project, then the petitioner must comply with section 5641 of the California Business and Professions Code, which limits the beneficiary's duties to "planting plans", which is making plans or drawing for the selection, placement, or use of plants when the execution of such plans or drawings does not affect the public health, safety and welfare. Thus, under California law, the beneficiary is not required to have a license to perform the duties of a landscape designer.

For the reason set forth above, the AAO concludes that the beneficiary is qualified to perform the duties of the proposed position.

**ORDER:** The previous decisions of the AAO dated February 17, 2005 and the director dated November 4, 2003 shall be withdrawn. The petition is approved.