



U.S. Citizenship  
and Immigration  
Services

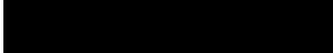
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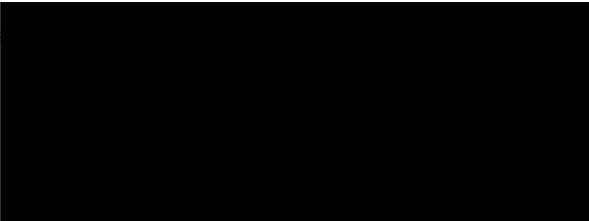


*DZ*

FILE: WAC 02 283 50799 Office: CALIFORNIA SERVICE CENTER Date: **SEP 21 2005**

IN RE: Petitioner:   
Beneficiary: 

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*

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 The director's decision shall be withdrawn and the matter remanded to the director to determine whether the beneficiary is qualified to perform the proffered position.

The petitioner provides specialty day care programs to disabled adults. It seeks to employ the beneficiary as a project manager. 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.

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 a project manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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 analyzing and reviewing proposed construction plans to ensure compliance with safety, strength, design, and shape standards; inspecting existing structures and advising on and planning the execution of projects; providing technical drawings, Autocad designs, and draft detailed plans in compliance with intended use, design elements, and building department standards and requirements; assigning technical tasks to personnel and supervising and reviewing their work to ensure compliance with set standards and plans; coordinating construction and engineering activities; providing on-site supervision; evaluating the function and productivity of systems and products; advising on project costs and their feasibility; and proposing and implementing means of improving productivity. The petitioner stated that the proposed position requires a bachelor's degree in architecture.

The director stated that the proposed position resembles a general manager and top executive as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reveals that those occupations do not require a bachelor's degree in a specific specialty. The director discussed the decision in *Matter of Caron Int'l, Inc.* 19 I&N 791 (Comm. 1988), which involved a general managerial position. The director found that the evidence failed to show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree, and that the proposed duties and stated level of responsibility did not indicate complexity or authority that is beyond what is normally encountered in the occupational field.

On appeal, counsel asserts that the proposed position is not analogous to a general manager. According to counsel, the proposed duties involve managing the construction of new facilities and remodeling existing facilities. Counsel narrates the proposed duties; states that the submitted job postings require a bachelor's degree; discusses project manager positions in prior AAO cases; distinguishes *Matter of Caron Int'l, Inc.* from the facts in the immediate petition; and asserts that the evidence shows that the proposed position is a specialty occupation.

Upon review of the record, the petitioner has satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that the petitioner establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. As described by the petitioner, the proposed duties resemble those of an architect, which the *Handbook* reports is an occupation that requires a bachelor's degree in architecture or a related field. The *Handbook* states:

Architects provide professional services to individuals and organizations planning a construction project. They may be involved in all phases of development, from the initial

discussion with the client through the entire construction process. Their duties require specific skills—designing, engineering, managing, supervising, and communicating with clients and builders. . . .

. . .

Architects may also assist clients in obtaining construction bids, selecting contractors, and negotiating construction contracts. As construction proceeds, they may visit building sites to make sure that contractors follow the design, adhere to the schedule, use the specified materials, and meet work quality standards. The job is not complete until all construction is finished, required tests are conducted, and construction costs are paid. Sometimes, architects also provide postconstruction services, such as facilities management. They advise on energy efficiency measures, evaluate how well the building design adapts to the needs of occupants, and make necessary improvements.

With respect to the educational and licensure requirements of an architect, the *Handbook* conveys:

All States and the District of Columbia require individuals to be licensed (registered) before they may call themselves architects or contract to provide architectural services. Nevertheless, many architecture school graduates work in the field while they are in the process of becoming licensed. However, a licensed architect is required to take legal responsibility for all work. Licensing requirements include a professional degree in architecture, a period of practical training or internship, and passage of all divisions of the ARE.

In most States, the professional degree in architecture must be from one of the 113 schools of architecture that have degree programs accredited by the National Architectural Accrediting Board (NAAB). However, State architectural registration boards set their own standards, so graduation from a non-NAAB-accredited program may meet the educational requirement for licensing in a few States. Three types of professional degrees in architecture are available through colleges and universities. The majority of all architectural degrees are from 5-year Bachelor of Architecture programs, intended for students entering university-level studies from high school or with no previous architectural training.

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

The AAO will now consider whether the beneficiary is qualified for the proposed position. The record contains an educational evaluation from [REDACTED] that concluded that the beneficiary's bachelor's degree in architecture is the educational equivalent to a U.S. baccalaureate degree in architecture awarded by a regionally accredited university in the United States. However, no evidence in the record shows that the beneficiary is registered to practice as an architect in California. In the response to the request for evidence the

petitioner stated that the proposed position does not require licensure as the actual construction work is contracted out to licensed contractors and is approved by licensed engineers. No evidence in the record shows that a licensed engineer has agreed to take legal responsibility for the beneficiary's work and that California law will permit this in lieu of an individual's registration. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As the beneficiary will provide services as an architect, the beneficiary must hold proper licensure. Consequently, the director's decision will be withdrawn and this matter remanded to the director who shall determine whether the beneficiary is qualified to perform the duties of the proffered position. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of the proffered position, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. 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 January 8, 2004 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.