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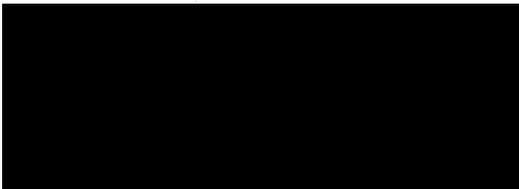
FILE: WAC 03 129 53424 Office: CALIFORNIA SERVICE CENTER Date: AUG 25 2006

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, Chief  
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 dismissed. The petition will be denied.

The petitioner is a structural engineering business that seeks to extend its authorization to employ the beneficiary as an architect consultant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional evidence.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (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 architect consultant. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director denied the petition because the petitioner did not submit evidence that the beneficiary is a licensed architect in the State of California or that she is working under the supervision of a licensed architect. On appeal, the counsel states, in part, that the instant petition is an extension of a previously approved petition, through which it was established that the position qualified as a specialty occupation. Counsel also submits evidence of the structural and civil engineering license for the petitioner's owner and president and the architect license [REDACTED]

In this case, the proffered position is that of an architect consultant. A review of the *Handbook*, 2006-2007 edition, under the category of "Architects, Except Landscape and Naval" finds the following training requirements:

All States and the District of Columbia require individuals to be licensed (registered) before they may call themselves architects and contract to provide architectural services. During this time between graduation and becoming licensed, architecture school graduates generally work in the field under supervision of a licensed architect who takes legal responsibility for all work. Licensing requirements include a professional degree in architecture, a period of practical training or internship, and a passing score on all divisions of the Architect Registration Examination (ARE).

The evidence of record indicates that the beneficiary holds a foreign bachelor's degree in architecture and that she works under both a licensed architect and a licensed engineer. The petitioner therefore has overcome the director's decision that the beneficiary would not be working with a license or under the supervision of a licensed architect. The record, however, does not establish that the beneficiary is qualified to perform the services of the specialty occupation, in that the record does not contain an evaluation of the beneficiary's credentials from a service that specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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 not sustained that burden.

**ORDER:** The appeal is dismissed. The petition is denied.