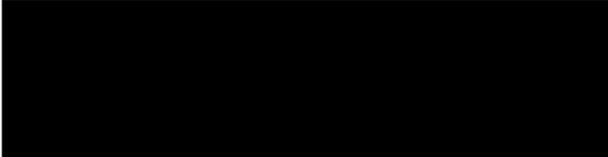


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D2

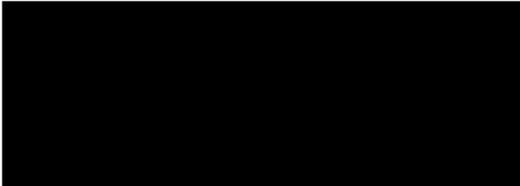
FILE: WAC 05 158 55324 Office: CALIFORNIA SERVICE CENTER Date: **DEC 04 2006**

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 an architectural firm. It seeks to employ the beneficiary as an interior CAD designer and endeavors to classify him 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 on the basis that the beneficiary was not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional information stating that the beneficiary is qualified to perform the duties of a specialty occupation.

The issue to be discussed in this proceeding is whether the beneficiary qualifies to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) completion of such experience in the specialty equivalent to the degree, and
(ii) 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, the 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The offered position is that of an interior CAD designer. The U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that a bachelor's degree is required for most entry-level design positions, except for floral design and visual merchandising. Bachelor's degrees in fine arts are issued at four year colleges and universities where the curriculum includes art, art history, principles of design, designing and sketching, and specialized studies for specific design disciplines. The *Handbook* further notes that interior design is the only design field subject to government regulation. According to the American Society of Interior Designers, 22 States and the District of Columbia register or license interior designers.

An educational evaluation report was issued by a credentials evaluation service, the Foundation for International Services, Inc. (FIS), indicating that the beneficiary's foreign education and work experience was equivalent to a bachelor's degree in computer aided design from a regionally accredited college or university in the United States. FIS noted that the beneficiary held an associate's degree in general liberal arts and sciences, and an associate's degree in architecture from a regionally accredited community college in the United States. The credentials evaluation service then considered the beneficiary's prior employment experience in arriving at its decision that the beneficiary had the equivalent of a baccalaureate level education. A credentials evaluation service may only evaluate a beneficiary's education for equivalency purposes, not work experience. A beneficiary's past work experience may only be evaluated for equivalency purposes under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) by an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. The record does not establish that the FIS evaluator has this authority. The evaluation is, therefore, of little evidentiary value and does not establish that the

beneficiary has the equivalent of a baccalaureate level education related to the offered position.

Citizenship and Immigration Services (CIS), may itself determine whether the beneficiary is qualified to perform the duties of the specialty occupation. That determination may be made pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which provides:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The petitioner provided three statements from licensed architects commenting on the beneficiary's work experience. A letter from [REDACTED] states that the beneficiary was previously employed by the petitioner and that Perry supervised and trained the petitioner's employees, including the beneficiary. Mr. [REDACTED] states that although he left the petitioner's employ in May of 2004, he has maintained a relationship with firm personnel and that he is aware of the beneficiary's continued development within the profession, especially his skills with the production of computer aided drawings and computer generated models. Mr. [REDACTED] further states that he has observed the beneficiary in large project capacities and that, in his opinion, the beneficiary has spent his time with the petitioner effectively gaining the required expertise in order to develop as an architectural intern, and that the beneficiary is on track for architectural registration within the state of California.

A second architect, [REDACTED] with [REDACTED] provided a statement indicating that the beneficiary worked on several of his projects and demonstrated expert knowledge on AutCad, Revit, Sketch Up and other various programs essential to the architecture profession. The petitioner's president, a registered architect, states that the beneficiary has worked for him for several years, and that he has attained a high level of expertise and experience in several forms of architectural programs, Autocad, Revit, Sketch UP

and Photoshop. None of the submitted statements, however, are sufficient to establish that the beneficiary has obtained a baccalaureate level education in a field of study that is closely related to the duties of the proffered profession. The duties performed by the beneficiary with reference to the statements of Mr. [REDACTED] and Mr. [REDACTED] are not set forth in their opinion letters in sufficient detail to establish that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation.

Further, while the record contains letters of recommendation from the beneficiary's employers and co-workers, and evidence of the beneficiary's past work experience, it does not establish that the beneficiary has recognition of expertise in the specialty. Recognition of expertise may be established by opinions from at least two recognized authorities in the same specialty occupation. A recognized authority is defined by regulation as a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such opinions must state: the writer's qualifications as an expert; the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative, and by whom; how the conclusions were reached; and the basis for the conclusions supported by copies or citations of any research material used. None of the opinions or statements submitted contain sufficient documentation to establish that they were issued by "recognized authorities" as defined by regulation. Furthermore, the record does not establish that the beneficiary has recognition of expertise under 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5)(ii),(iii),(iv), or (v). As such, the record does not establish that the beneficiary is qualified to perform the duties of the specialty occupation.

Beyond the decision of the director, the petitioner has not established that the position qualifies as a specialty occupation in the state of California. California Business and Professions Code Section 5801(d) provides that a person may become a certified interior designer in the State of California with a combination of eight years of related education and work experience and an examination. As the state of California does not require a baccalaureate degree in the specialty for entry into the field, the position has not been established as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Nor does the evidence of record establish eligibility under any of the remaining criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). For this additional reason, the petition may not be approved.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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