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Washington, DC 20536



U.S. Citizenship
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Services

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MAR 02 2004

FILE: LIN 02 233 52840 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



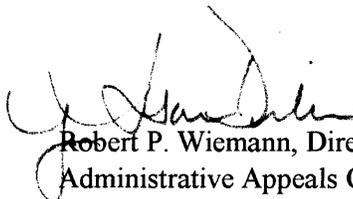
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 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 construction company that seeks to employ the beneficiary, a citizen of Mexico, as a project manager. The petitioner, therefore, endeavors to classify the beneficiary as a TN-2 alien to perform services as a professional business person pursuant to section 214(e)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (e)(2).

The director denied the petition because: (1) the proffered position does not qualify as a professional occupation according to Appendix 1603.D.1 to Annex 1603 of the North American Free Trade Agreement (NAFTA); and (2) the beneficiary does not meet the minimum educational or alternative credential requirements for the classification sought.

On appeal, counsel asserts that the director erred in finding that the proffered position did not qualify as a profession under the NAFTA. Moreover, counsel asserts that the record demonstrates that the beneficiary is qualified for the classification sought. Counsel indicated on the Form I-290B that a brief and/or evidence would be submitted to the AAO within 30 days. However, more than seven months have passed and the AAO has not received any new information or documentation. Therefore, the AAO considers the record complete and it will render a decision based on the present record.

Section 214(e)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1184(e)(2), states:

An alien who is a citizen of Canada or Mexico . . . who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as "NAFTA") to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor. For purposes of this Act, including the issuance of entry documents and the application of subsection (b), such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 101(a)(15)

Pursuant to 8 C.F.R. § 214.6(b):

Business activities at a professional level means those undertakings which require that, for successful completion, the individual has a least a baccalaureate degree or appropriate credentials demonstrating status as a professional in a profession set forth in Appendix 1603.D.1 of the NAFTA.

The beneficiary of this petition is a citizen of Mexico. Pursuant to 8 C.F.R. § 214.6(d)(2), a petition on behalf of a citizen of Mexico seeking classification as a TN professional shall be accompanied by:

(i) A certification from the Secretary of Labor that the petitioner has filed the appropriate documentation with the Secretary in accordance with section (D)(5)(b) of Annex 1603 of the NAFTA.

(ii) Evidence that the beneficiary meets the minimum education requirements or alternative credentials requirements of Appendix 1603.D.1 of Annex 1603 of the NAFTA as set forth in § 214.6(c). This documentation may consist of licenses, degrees, diplomas, certificates, or evidence of membership in professional organizations. Degrees, diplomas, or certificates received by the beneficiary from an educational institution not located within Mexico,

Canada, or the United States must be accompanied by an evaluation by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. Evidence of experience should consist of letters from former employers or, if formerly self-employed, business records attesting to such self-employment; and

(iii) A statement from the prospective employer in the United States specifically stating the Appendix 1603.D.1 profession in which the beneficiary will be engaging and a full description of the nature of the duties which the beneficiary will be performing. The statement must set forth licensure requirements for the state or locality of intended employment or, if no license is required, the non-existence of such requirements for the professional activity to be engaged in.

It is important to note that no evidence is in the record of a statement made by the petitioning entity that describes in detail the duties of the proffered position. Instead, the record contains only counsel's description of the proffered position's duties. Counsel's assertions, however, do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Consequently, the record contains only the petitioner's statement of the job title, project manager, and the nontechnical description of the job: architectural-industrial design and construction management. Given that the petitioner does not confirm counsel's job description, the AAO will disregard counsel's assertions about the job description. With this limitation in mind, the AAO, after a careful review of the entire record, concludes that the petitioner has not shown that the proffered position meets the requirements for the classification sought, as defined under section 214(e) of the Act.

On appeal, counsel maintains that the proffered position is listed in Appendix 1603.D.1 of Annex 1603 of the NAFTA (the NAFTA list) because the duties are performed by architects and industrial designers. However, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position is a profession listed in Appendix 1603.D.1 of Annex 1603 of the NAFTA (the NAFTA list). The AAO routinely refers to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) to provide a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within an occupation. According to the *Handbook*, industrial designers develop countless manufactured products such as airplanes, cars, children's toys, furniture, and computer equipment. Most industrial designers work for engineering or architectural consulting firms or for large corporations. Thus, the *Handbook* shows that the petitioning entity is not the typical employer of an industrial designer. Moreover, as previously discussed, because the AAO will disregard counsel's assertions about the proffered job duties, the petitioner has not provided an adequate description of the proffered position's duties to establish that it is on the NAFTA list. With respect to the duties of architects, the *Handbook* states that they design a wide variety of buildings, such as office and apartment buildings, schools, churches, factories, hospitals, houses, and airport terminals. Some architects specialize in one phase of work or one type of building. Based on the information in the *Handbook*, the proffered position is dissimilar from that of an architect. Consequently, the brief nontechnical job description provided by the petitioner is not adequate to establish that the beneficiary would be a project manager engaged in architectural-industrial design and construction management.

Accordingly, the petitioner has not shown that the proffered position meets the requirements for the classification sought, as defined under section 214(e) of the Act.

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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 met that burden.

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