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**U.S. Citizenship
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FILE: WAC 04 227 53300 Office: CALIFORNIA SERVICE CENTER Date: **AUG 03 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:
[Redacted]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 an automotive protection product service company and seeks to employ the beneficiary as an industrial 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 denied the petition because the record did not establish that a specialty occupation was available for the beneficiary, and thus, the beneficiary was not coming temporarily to the United States to perform services in a specialty occupation under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The issues to be discussed in this proceeding are whether the proffered position qualifies as a specialty occupation, and whether the beneficiary is coming temporarily to the United States to perform services in 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)(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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an industrial designer. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Prepare sketches or diagrams reflecting total design concepts;
- Prepare and oversee final layout, detail, and assembly drawings including cost and manufacturing specifications;
- Use digital design tools including CAD, CAID, and 2-D sketching software;
- Confer with technical staff and the owner in finalizing design concepts or resolving design issues;
- Recommend technical changes or modifications as needed;
- Recommend improved tools, methods, and processes to continuously improve effectiveness and productivity;
- Lead development of the technical approach used in technical proposals;
- Prepare new process analysis requirements sheets;
- Prepare management comprehensive data reports on products and services;
- Proficiently visualize automotive exterior products and process concepts and ideas;

- Recognize issues, find their root causes and negotiate solutions as part of product/process critiques;
- Investigate and resolve product/process issues using three-dimensional form development; and
- Analyze product blue prints and supporting data to determine component and assembly labor requirements.

The petitioner does not state that it requires a minimum of a bachelor's degree in any specific discipline for entry into the proffered position, but deems the beneficiary qualified by virtue of his foreign education which has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in industrial engineering, architectural design and architecture from an accredited college or university in the United States.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those performed by commercial and industrial designers. Upon review of the record, the petitioner has established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). The *Handbook*, 2004-05 edition, notes that a bachelor's degree is required for most entry-level design positions and that acceptable degrees in fine arts are granted at 4-year colleges and universities. Candidates in industrial design often pursue a master's degree to increase their chances of selection for open positions. The 2000-01 edition of the *Handbook* notes that academic training leading to a bachelor's degree in art or design had virtually become a necessity in the industry. The duties of the proffered position would, therefore, qualify it as a specialty occupation.

The proffered position would appear to qualify as a specialty occupation. The beneficiary would use design software such as Auto Cad to create and design paint protection film (PPF) for vehicles, boats and airplanes. Eighty five per cent of the beneficiary's time would be spent creating new designs. These duties, as described, appear to be sufficiently specialized and complex that knowledge required to perform them would usually be associated with the attainment of a baccalaureate or higher degree and would meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). In addition to qualifying the proffered position as a specialty occupation, however, the petitioner must also demonstrate that the qualified nonimmigrant alien is coming temporarily to the United States to perform services in a specialty occupation under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). This, the petitioner has failed to do.

The record indicates that the petitioner is a new company with one employee who works as a PPF installer for various automobile dealerships and individuals. While the petitioner states that it is one of the top companies in Southern California for PPF installation, the records submitted indicate only that the petitioner opened its business approximately 1-½ years prior to the filing of the Form I-129 petition, and generated sales in this business of \$35,016 in the year 2003. The record contains a business license for the petitioner in Corona, CA and a lease for a business premises to be used as a "vehicle coating service." The petitioner's business plan states that due to business expansion, it decided to open a retail location and that its long-range plans are to "become a design house selling kits to other installers" The record does not establish that the petitioner

presently has a detailed business plan for the creation of a "design house," or the present facilities, equipment or expertise necessary to establish such a venture. The petitioner has not established that it will employ the beneficiary temporarily in a specialty occupation. Simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). Citizenship and Immigration Services (CIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Based upon the foregoing, the petition must be denied.

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 and the appeal shall accordingly be dismissed.

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