



U.S. Citizenship  
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FILE: SRC 03 041 51708 Office: TEXAS SERVICE CENTER Date: **FEB 21 2008**

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:



**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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

The petitioner sells its own line of custom cabinetry and provides design and installation services. It seeks to employ the beneficiary as an architectural drafter 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, determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner submitted a brief statement and documentation in support of the appeal. The AAO dismissed the appeal, finding that the record did not contain sufficient evidence to demonstrate that the proffered position is a specialty occupation.

On motion, counsel for the petitioner submits: "the long-standing HR guidelines of [the petitioner] regarding the position of Architectural Drafter, along with a facsimile transmittal from the [petitioner's controller]," and a letter from the beneficiary's previous H-1B employer. Counsel asserts that these documents show that a degree requirement is common in the industry in parallel positions among similar organizations; that the Department of Labor's *Occupational Outlook Handbook (Handbook)* in the section on architects and surveyors indicates that new graduates usually begin work in architectural firms, where they assist in preparing architectural documents or drawings or write specifications and that this is the job position set forth in the company's original letter. Counsel also contends that great weight should be given to the petitioner's requirements, as it is an industry leading company.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel has not submitted new facts supported by affidavits or other documentary evidence. The statements made by counsel and the petitioner's controller are not affidavits as they were not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (7th Ed., West 1999). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, do they contain the requisite statement, permitted by federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. Such unsworn statements made in support of a motion are not evidence and thus, as is the case with the arguments of counsel, are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

In addition, the petitioner's controller's facsimile references a document used by showroom managers when attempting to fill the petitioner's position of architectural drafter, that indicates the minimum requirement for the position of architectural drafter is a university degree or equivalent. The referenced document does not identify a specific discipline of study as a guideline to fill the position of architectural drafter. To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study.

Further, the submission of a letter by the beneficiary's former H-1B employer does not establish an industry standard. The opinion of a single cabinetry manufacturer and installer is insufficient to establish an industry standard. Furthermore, the beneficiary's former employer does not provide a detailed description of the duties the beneficiary performed for its organization. The record does not contain adequate evidence demonstrating that cabinetry manufacturers and installers "routinely employ and recruit only degreed individuals," in a specific discipline for the position of an architectural drafter. Thus, the record on appeal does not contain new or substantiating evidence that a degree requirement in a specific discipline is common to the industry in parallel positions among similar organizations.

The AAO acknowledges counsel's reference to the *Handbook's* discussion of architects and surveyors; however the proffered position is not for an architect but for an architectural drafter. The AAO observes that the director specifically requested a clarification regarding the proffered position and whether the beneficiary would be hired as an architectural drafter or an intern/junior architect and the response indicated that the proffered position was for an architectural drafter. Moreover, the brief description of the proposed duties of the position was insufficient to conclude that the position was more than that of an architectural drafter.

Finally, although the AAO acknowledges counsel's assertion that great weight should be given to the company's requirements, as it is an industry leading company, the desire of a petitioner to hire an individual with a degree is insufficient to establish a position as a specialty occupation. The AAO again notes that the record does not include evidence of the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

The petitioner has not submitted new facts supported by affidavits or other documentary evidence. Moreover, counsel has not submitted any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or United States Citizenship and Immigration Services' (CIS) policy based on the evidence of record at the time of the initial decision. Counsel does not substantiate the claim that the decision was an incorrect application of the law by pertinent precedent decisions, or establish that the director or the AAO misinterpreted the evidence of record. The evidence fails to satisfy the requirements of a motion to reconsider.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The regulation at 8 C.F.R. § 103.5(a)(4) states: "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

SRC 03 041 51708

Page 4

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