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**U.S. Citizenship
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Services**

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FILE: WAC 02 052 53514 Office: CALIFORNIA SERVICE CENTER Date: FEB 16 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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a custom designer and installer of floors made of imported marble, granite, and limestone. It seeks to employ the petitioner as an architectural engineer and 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 ground that the beneficiary was not qualified to perform the services of a specialty occupation. In particular, the director found that the beneficiary did not meet the licensure requirement for H classification set forth in 8 C.F.R. § 214.2(h)(4)(v).

The subject regulation provides, in pertinent part, as follows:

- A. *General.* If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien . . . seeking H classification in that occupation must have that license prior to approval of the petition to be found eligible to enter the United States and immediately engage in employment in the occupation.
- B. *Temporary licensure*
- C. *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

California, the state of intended employment, requires architects to be licensed. The record indicates that the beneficiary, a native of the Philippines, earned a bachelor of science in architecture in 1988 from the University of Santo Tomas in Manila and has been a licensed architect in the Philippines since 1992. The beneficiary was not licensed by the State of California, nor did he possess a temporary license, at the time the instant H-1B petition was filed in November 2001. In a letter accompanying the petition, dated November 6, 2001, the petitioner emphasized that the beneficiary would be working under the direct supervision of a licensed architect. On December 3, 2001 the service center requested the petitioner to submit evidence that it employed a licensed architect, that the beneficiary would be working under his or her supervision, and a copy of the architect's license from the State of California. The petitioner responded by letter dated December 19, 2001, stating that it did not employ a licensed architect, but that the beneficiary's work would be supervised by licensed architects employed by the petitioner's clients. The petitioner indicated that it had not requested copies of any of their licenses, however, "since they are not my employees, and I do not want to strain our business relationship."

Based on the petitioner's letter the director determined, in her decision dated February 8, 2002, that the beneficiary did not possess an architecture license from the State of California and the petitioner did not employ a licensed architect who would supervise the beneficiary. The director concluded that the

petitioner failed to establish the beneficiary's eligibility to fully practice the specialty occupation. Accordingly, the beneficiary was not qualified to perform the services of the specialty occupation.

On appeal the petitioner submitted a letter, dated February 20, 2002, stating that it "did not fully understand the necessity of having a state licensed architect to supervise" the beneficiary and had hired an architect licensed in the State of California "to manage my projects and supervise my technical staff," including the beneficiary. Also submitted on appeal was a letter from the newly-hired architect providing his license number.

The record fails to establish the beneficiary's eligibility for H-1B classification. The petitioner initially stated, in response to the director's request for additional evidence in December 2001, that the beneficiary's work would be supervised by licensed architects employed by its clients. But the petitioner did not identify or provide a copy of the California state license of any architect who would be supervising the beneficiary, despite the director's specific request for such evidence. Simply going on record without supporting documentary evidence does not satisfy the petitioner's burden of proof. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190, 193-94 (Reg. Comm. 1972).

On appeal the petitioner indicated it had now hired its own licensed architect, in February 2002, to supervise the beneficiary. As provided in 8 C.F.R. § 103.2(b)(12), however, a petitioner must establish that it was eligible for the requested benefit at the time the petition was filed. A visa petition may not be approved at a later date based on a set of facts not present at the time of filing. *See Matter of Michelin Tire Corporation*, 17 I&N Dec. 248 (Reg. Comm. 1978). The instant petition was filed in November 2001, but the petitioner did not hire its licensed architect until February 2002. At the time of filing, therefore, the petitioner did not employ a licensed architect who could supervise the beneficiary.

As discussed above, the petitioner has failed to identify any architect licensed by the State of California who was in a position to supervise the beneficiary's work as of the date the H-1B petition was filed in November 2001, as required for the beneficiary to satisfy the alternative licensure requirement for H classification set forth in 8 C.F.R. § 214.2(h)(4)(v)(C). The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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