

PUBLIC COPY

Identifying data deleted to
prevent disclosure in warrants
invasion of personal privacy



U.S. Citizenship
and Immigration
Services



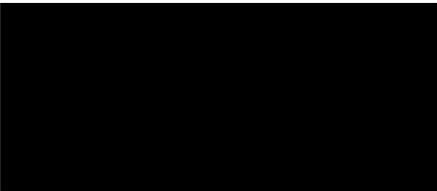
MAR 21 2005

FILE: WAC 03 085 51690 Office: CALIFORNIA SERVICE CENTER Date:

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, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded to the director to determine whether the beneficiary is qualified to perform the proffered position.

The petitioner is an importer and distributor of natural stone products. It seeks to employ the beneficiary as an architectural designer. The petitioner, therefore, 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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.

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 is 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) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an architectural designer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties, under the supervision of a licensed architect, that entail schematic design and design development, preparing construction documents, programming, and project scheduling; budgeting, bid qualifications, and construction administration; creating 3d models, perspectives, and animations; presenting designs to clients and discussing modifications; preparing presentation materials, and coordinating, developing, and reviewing proposed project designs and construction plans; reading publications and attending shows; consulting with engineering, marketing, and production personnel to establish design concepts; verifying designs in the field; and preparing working drawings. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in architecture or a closely related field.

The director determined that, based on information in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the proffered position's duties were performed by an interior designer and drafter, occupations that do not require a specific baccalaureate degree. On appeal, counsel states that the proffered position is performed by an architect, which is a specialty occupation.

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As described by the petitioner, the beneficiary's specific duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in architecture. Further, the submitted company brochure indicates that the petitioner has provided services for a variety of large-scale projects such as Century Plaza Hotel, The Japanese American National Museum, and the Howard Hughes Building, and the petitioner's letterhead describes it as providing "complete project planning and analyses."

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

There is insufficient evidence in the record to determine whether the beneficiary is qualified to perform the proffered position. The beneficiary's bachelor of science in architecture from the University of the Philippines is determined by Educational Assessment, Inc. to be the educational equivalent to a bachelor of science in architecture from an accredited college or university in the United States. Nonetheless, the *Handbook*, a resource that the AAO routinely consults to determine the education, training, and experience normally required to enter into an occupation, reports that all states and the District of Columbia require a person to be licensed

before the person can provide architectural services. The *Handbook* indicates that architectural school graduates work in the field even though they are not licensed; however, a licensed architect is required to take legal responsibility for all work.

The beneficiary does not hold a license to practice architecture in California. The petitioner indicated that the beneficiary will work under the close supervision of a licensed architect, Ali Olfati (license no. C22217). The Form DE-6 does not show that Ali Olfati is employed by the petitioner. Further, there is no copy of Ali Olfati's license in the evidentiary record. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Consequently, the director's decision will be withdrawn and this matter shall be remanded to the director who shall determine whether the beneficiary is qualified to perform the duties of the proffered position. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of the proffered position, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requires for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's January 21, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.