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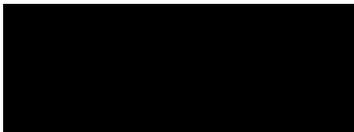
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FILE: SRC 04 196 50301 Office: TEXAS SERVICE CENTER Date: JUN 12 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter remanded for further action and consideration.

The petitioner is an interior design company. It desires to employ the beneficiary temporarily in the United States as an interior designer, at an annual salary of \$22,048, for three years. The director determined that the petitioner did not establish that the proffered position qualifies as a specialty occupation as enumerated in the regulations at 8 C.F.R. 214.2(h)(4)(iii)(A) and denied the petition.

On appeal, counsel states that the *Occupational Outlook Handbook* (2004-2005 Edition) clearly states that most designers need a bachelor's degree, and candidates with a master's degree hold an advantage. Counsel also states that the position of interior designer offered by the petitioner qualifies as a specialty occupation under federal regulations. Counsel submits a brief in support of the petitioner's appeal.

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), defines an H-1(b) temporary worker as:

an alien . . . who is coming temporarily to the United States to perform services in a specialty occupation described in section 214(i)(1) . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1). . . .

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.

Similarly, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) provides that:

Specialty occupation means an 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) establishes four standards, one of which an occupation must meet to qualify as a specialty occupation:

- (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-290B and supporting documentation; (2) the director’s denial letter; (3) the director’s request for additional evidence; (4) the petitioner’s response to the director’s request; and (5) Form I-129 and supporting documentation. The AAO reviewed the record in its entirety before issuing the decision.

The petitioner is seeking the beneficiary’s services as an interior designer. In determining whether a position qualifies as a “specialty occupation” for purposes of the nonimmigrant H-1B visa, CIS will examine whether there is a general requirement of specialized study for the position, coupled with whether the position has complex and discretionary duties normally associated with the position. *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999).

The Petition for a Nonimmigrant Worker (Form I-129) was filed on July 9, 2004. The statement in support of the non-immigrant petition and the reply to the director’s request for evidence (RFE) provided a description of the proffered position. According to this evidence, in the proffered position, the beneficiary will prepare detailed interior design and consultation in regards to fabric and furniture selections for the interiors of residential and commercial buildings; formulate design concepts which are practical, aesthetic, and conducive to intended purposes such as raising productivity, selling merchandise, or improving lifestyle; plan, design, and furnish interior environments of residential, commercial, and industrial buildings; confer with clients to determine architectural preferences, purpose and function of environment, budget, types of construction and other factors; analyze the interior design factors, such as space planning, layout and utilization of furnishings, color schemes and coordination; integrate findings with knowledge of interior design; formulate environmental plan to be practical, esthetic and conducive to intended purposes and render design ideas in the form of drawings or illustrations.

On September 21, 2004, CIS requested the petitioner to submit evidence that the position meets one of the criteria to qualify as a specialty occupation as stipulated in the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A). CIS also requested that the petitioner submit all degree(s) held by all personnel in its company who hold or who have held the proffered position.

In its response, dated October 9, 2004, the petitioner states that a bachelor's degree is the minimum requirement for entry into the position of interior design. In order to perform the job duties, the president of the petitioning entity contends that the beneficiary will have to apply her specialty knowledge in the areas of graphic communication (including hand media graphic techniques and rapid visualization sketching), significant theories about the interactions of people and space, applied physics (such as lighting design and selection of material and color scheme), environmental behavior (including community welfare, safety and health protection, environmental quality), interior materials and estimation, and interior construction systems (such as wood structural systems and detailing of interior finish materials).

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The petitioner states that the proffered position is that of an interior designer. The AAO finds that the beneficiary's duties in the proffered position are those of an interior designer. The *Handbook*, 2006-07 edition, gives the following information about the training of an interior designer:

Postsecondary education – especially a bachelor's degree is recommended for entry-level positions in interior design.

Therefore, a baccalaureate or higher degree or its equivalent is not normally the minimum requirement for entry into this particular position. The *Handbook*, 2006-07 edition, states that a bachelor's degree is recommended; it does not state that a bachelor's degree is normally required to perform the duties of the occupation.

The AAO notes that the beneficiary's place of intended employment is in Houston, Texas. The Texas Board of Architectural Examiners regulates the practice of interior design in the State of Texas. According to its Internet site, *www.tbae.state.tx.us*, the title "interior design" is a regulated term. Only those individuals who have become registered as an interior designer may legally call themselves an interior designer. The Board's publication "Rules and Regulations of the Board and the Statutes Regulating the Practice of Interior Design," which is accessible at the Internet site, provides the following information at Chapter 5, Subchapter B, explaining the eligibility for registration as an interior designer in the State of Texas:

5.31 REGISTRATION BY EXAMINATION

- (a) In order to obtain interior design registration by examination in Texas, an Applicant shall demonstrate that the Applicant has a combined total of at least six (6) years of approved interior design education and experience and shall successfully complete the interior design registration examination as more fully described in Subchapter C. For purposes of this section, an Applicant has "approved interior design education" if:

....

(3) The Applicant has:

(A) A baccalaureate degree in a field other than interior design; and

(B) An associate's degree or a two- or three-year certificate from an interior design program at an institution accredited by an agency recognized by the Texas Higher Education Coordinating Board;

(4) The Applicant has:

(A) A baccalaureate degree in a field other than interior design; and

(B) An associate's degree or a two- or three-year certificate from a foreign interior design program approved or accredited by an agency acceptable to the Board; [or]

....

(6) The Applicant applied on or before August 31, 2010, and prior to that date, the applicant successfully completed:

(A) At least four (4) years of actual experience working under the direct supervision of a registered interior designer or a registered architect;

(B) A FIDER¹ accredited pre-professional assistant level program; and

¹ The Foundation for Interior Design Education Research (FIDER) is an agency that sets standards for postsecondary interior design education and evaluates college and university interior design programs. The FIDER accredited pre-professional assistant level program appears to consist of an associate degree in interior design.

(C) Credit for the equivalent of at least sixty (60) semester credit hours toward any baccalaureate degree.

The above information demonstrates that an interior designer in the State of Texas is required to obtain a baccalaureate or higher degree or its equivalent in the specific specialty as a minimum for entry into the occupation in Texas. Thus, the information contained in the record of proceeding establishes that the position is a specialty occupation under the first criterion at 8 C.F.R. §214.2(h)(4)(iii)(A).

The petition may not be approved, however, as the record does not reflect that the beneficiary is qualified to perform the duties of the specialty occupation in accordance with the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(C) and (D). The Equivalency Evaluation Determination dated May 17, 2004 rendered by Globe Language Services, Inc. has no merit in that it evaluates experience as well as education. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) recognizes evaluations by credentials evaluation agencies only to the extent that they are based on a beneficiary's education. Further, the evaluation of the beneficiary's education is not probative because the transcripts upon which the evaluation depended are not supplied. The evaluation is not from a representative of an accredited university who has the authority to grant college-level credit for education or work experience, or that he is from a university that has a program for granting such credit, and thus may not be considered under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Further, the record does not reflect that the beneficiary is registered as an interior designer as required by Texas law.

As the director did not comment on the beneficiary's qualifications, the petition will be remanded in order for the director to determine whether the beneficiary is qualified to perform the duties of the specialty occupation. The director may afford the petitioner a reasonable time to provide evidence bearing on the beneficiary's qualifications and any other evidence deemed necessary. The director shall then render a new decision based on the evidence of record.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361.

ORDER: The director's decision of October 27, 2004 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner shall be certified to the AAO for review.