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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

02

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 01 2011

IN RE: [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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael T. Kelly
102 Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California Service Center 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 interior design firm with two employees. It seeks to employ the beneficiary as an Architectural Designer/Interiors 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, concluding that the petitioner failed to establish that the proffered position is a specialty occupation and that the petitioner failed to submit a valid Labor Condition Application (LCA).

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE) and the petitioner's response to the RFE; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

The first issue for consideration is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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:

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary’s services as an architectural designer/interiors. In the support letter, the petitioner described the proffered position as follows:

[The petitioner] now wishes to employ the services of an Architectural Designer/Interiors to assist in the highly technical development of our architectural interiors. In this specialty occupation, [the beneficiary] will be responsible for performing essential duties such as preparing detailed architectural

3-dimensional interior design, model building, specifications and perspective renderings detailing the architectural interiors. These architectural interiors include all of the millwork (including doors, window sashes, moldings), finishes, furnishings, space planning, and lighting. He will create these renderings using Autocad, Photoshop, and other design software to create the entire design concept. [The beneficiary] will work with the President of the company to ensure that budget restrictions are met on each project; he will liaise with the contractors hired out to carry out his designs to ensure timely completion of projects and that the jobs are being completed with the highest standards of care and quality. Finally, he will visit job sites to insure delivery of services and products are in accord with contractual specifications and to review and coordinate work at the site.

To make its determination whether this employment qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty 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 in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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 petitioner stated that the proffered position requires a minimum of a bachelor's or higher degree in architecture, interior design, or a closely related field. The petitioner submitted evidence that the beneficiary has the U.S. equivalent of a bachelor of architecture degree based on his foreign education.

Additionally, the petitioner indicated in the Form I-129 that the beneficiary would work at its offices in Las Vegas, Nevada. The LCA was certified for the beneficiary to work in Las Vegas, Nevada.

On April 14, 2009, the director issued an RFE requesting additional evidence that the proffered position is a specialty occupation, including a more detailed job description, as well as an LCA covering all the locations of employment and additional information regarding the petitioner's business.

In response to the RFE, counsel broke down the proffered duties as follows:

- *Conduct an analysis of specifications and prepare initial plans and drawings. Formulate design concepts* in consultation with the client and conduct feasibility studies for projects

with a particular focus on structural alterations and architectural elements and fittings (35% of the time);

- Engage in programming and data gathering by acquiring key information about new projects through in-depth discussions with clients (25% of the time);
- Work with quantity surveyors to establish costs and work schedules for larger projects and also work with architects to ensure adherence to zoning laws as well as with manufacturers and contractors (15% of the time);
- *Direct changes as required and oversee completion of the project* (15% of the time); and
- Present plans to meet client specifications (10% of the time).

(Emphasis added.) Counsel also states that the petitioner already employs one interior designer who has the U.S. equivalent of a bachelor's degree in architecture.

Regarding the location(s) where the beneficiary will work, counsel states:

[T]he beneficiary will have to supervise work at client locations from time to time once his designs are in the implementation stage. However, the vast majority of [the petitioner's] clients are located within Las Vegas and therefore fall within the area of employment listed on the Petitioner's LCA. In addition, the beneficiary would not need to be at any client locations for more than sixty days per year and the employer will fully satisfy the requirements enumerated in 20 C.F.R. § 655.735(a), (b) and (c)(1)-(3). Finally, as client locations with Las Vegas are finalized and it becomes clear where the beneficiary will have to engage in providing services at another location, the LCA will be amended to include these additional locations if necessary. The LCA cannot be amended to include additional specific job sites within Las Vegas at this time because the anticipated job sites are unknown at this juncture as the petitioner does not have confirmed interior design jobs that will be ongoing on October 1st when the beneficiary [sic] H-1B status would begin. As contracts are initiated between clients and the petitioner and if the beneficiary is assigned to work at particular job sites in Las Vegas, amended LCAs will be submitted as needed. . . .

Counsel also submitted copies of advertisements placed by other companies for interior designers. However, there is no evidence that any of these advertisements were placed by small design companies with businesses parallel to the petitioner. The majority of the ads appear to have been placed by larger well-established firms. Moreover, although some of the advertisements state that a bachelor's degree is required, most of them do not indicate that the degree must be in a specific specialty. For the advertisements that do state that at least a bachelor's degree in a specific specialty is required, one advertisement states that the bachelor's degree must be in interior design from an FIDER accredited university (a qualification the petitioner has not demonstrated that the beneficiary has met), another requires a bachelor's degree in architecture or interior design with a business development background, another requires a four year degree plus ten years of experience in commercial/institutional design, another requires an interior architectural degree or an interior design degree plus six years of experience at least some of which should be in healthcare, another requires a degree in interior design with five years of experience in commercial interior design, another advertisement

requires at least a bachelor's degree in interior design and space planning with NICDQ certification, and another requires a bachelor's degree in interior design plus five years of experience with federal government interiors. Therefore, even the advertisements that require at least a bachelor's degree in a specific specialty also require licensing, extensive and/or specific experience, which means these ads are most likely for more experienced positions than the one proffered here, or they require an interior design degree without an architectural degree alternative requirement. One other ad required a degree in architecture or interior design without specifying that the degree must be at least a bachelor's degree or the equivalent.

The director denied the petition on June 1, 2009.

On appeal, counsel for the petitioner argues that the position of "interior designer" qualifies as a specialty occupation. Counsel states that the petitioner provides interior design services for residences and businesses and also designs furniture and fixtures to complement designs. One of counsel's primary arguments for why the proffered position is a specialty occupation is because the petitioner is a new venture and that to remain competitive in the economic downturn, the petitioner decided to hire someone with at least a bachelor's degree or higher in interior design or architecture.

Additionally, counsel argues that the normal duties of the proffered position require frequent travel from location to location, but the beneficiary's presence at these locations would be casual and short-term and, therefore, the petitioner provided a valid LCA.

The AAO will first determine whether the proffered position is a specialty occupation.

The AAO finds that the proffered position is closest to that of an interior designer as defined in the *Handbook*, which is described as follows:

Interior designers draw upon many disciplines to enhance the function, safety, and aesthetics of interior spaces. Their main concerns are with how different colors, textures, furniture, lighting, and space work together to meet the needs of a building's occupants. Designers plan interior spaces of almost every type of building, including offices, airport terminals, theaters, shopping malls, restaurants, hotels, schools, hospitals, and private residences. Good design can boost office productivity, increase sales, attract a more affluent clientele, provide a more relaxing hospital stay, or increase a building's market value.

Traditionally, most interior designers focused on decorating—choosing a style and color palette and then selecting appropriate furniture, floor and window coverings, artwork, and lighting. However, *an increasing number of designers are becoming involved in architectural detailing, such as crown molding and built-in bookshelves, and in planning layouts of buildings undergoing renovation, including helping to determine the location of windows, stairways, escalators, and walkways.*

Interior designers must be able to read blueprints, understand building and fire codes, and know how to make space accessible to people who are disabled.

Designers frequently collaborate with architects, electricians, and building contractors to ensure that designs are safe and meet construction requirements.

Whatever space they are working on, almost all designers follow the same process. The first step, known as programming, is to determine the client's needs and wishes. The designer usually meets face-to-face with the client to find out how the space will be used and to get an idea of the client's preferences and budget. For example, the designer might inquire about a family's cooking habits if the family is remodeling a kitchen or ask about a store or restaurant's target customer to pick an appropriate motif. The designer also will visit the space to take inventory of existing furniture and equipment and identify positive attributes of the space and potential problems.

After collecting this information, the designer formulates a design plan and estimates costs. Today, designs often are created with the use of computer-aided design (CAD) software, which provides more detail and easier corrections than sketches made by hand. Upon completing the design plan, the designer will present it to the client and make revisions based on the client's input.

When the design concept is finalized, the designer will begin specifying the materials, finishes, and furnishings required, such as furniture, lighting, flooring, wall covering, and artwork. Depending on the complexity of the project, the designer also might submit drawings for approval by a construction inspector to ensure that the design meets building codes. If a project requires structural work, the designer works with an architect or engineer for that part of the project. Most designs also require the hiring of contractors to do technical work, such as lighting, plumbing, and electrical wiring. Often designers choose contractors and write work contracts.

Finally, the designer develops a timeline for the project, coordinates contractor work schedules, and makes sure work is completed on time. The designer oversees the installation of the design elements, and after the project is complete, the designer, together with the client, pay follow-up visits to the building site to ensure that the client is satisfied. If the client is not satisfied, the designer makes corrections.

Designers who work for furniture or home and garden stores sell merchandise in addition to offering design services. In-store designers provide services, such as selecting a style and color scheme that fits the client's needs or finding suitable accessories and lighting, similar to those offered by other interior designers. However, in-store designers rarely visit clients' spaces and use only a particular store's products or catalogs.

Interior designers sometimes supervise assistants who carry out their plans and perform administrative tasks, such as reviewing catalogues and ordering samples. Designers who run their own businesses also may devote considerable time to

developing new business contacts, examining equipment and space needs, and attending to business matters.

Although most interior designers do many kinds of projects, some specialize in one area of interior design. Some specialize in the type of building space—usually residential or commercial—while others specialize in a certain design element or type of client, such as healthcare facilities. The most common specialties of this kind are lighting, kitchen and bath, and closet designs. However, designers can specialize in almost any area of design, including acoustics and noise abatement, security, electronics and home theaters, home spas, and indoor gardens.

(Emphasis added.) According to the *Handbook*, 2010-11 online edition, “[a]n associate or bachelor’s degree is needed for entry-level positions in interior design. Some States license interior designers.” As an associate’s degree program is acceptable, interior designer positions do not usually require at least a bachelor’s degree or the equivalent and therefore do not normally constitute a specialty occupation. The *Handbook* goes on to state:

Postsecondary education is necessary for entry-level positions in interior design. Training programs are available from professional design schools or from colleges and universities and usually take 2 to 4 years to complete. Graduates of 2-year or 3-year programs are awarded certificates or associate degrees in interior design and normally qualify as assistants to interior designers upon graduation. Graduates with a bachelor’s degree usually qualify for a formal design apprenticeship program. . . .

Additionally, according to the *Handbook*, a number of states register or license interior designers.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

As the *Handbook* indicates that less than a bachelor’s degree or the equivalent is acceptable for interior design positions, the AAO concludes that the performance of the proffered position’s duties does not require the beneficiary to hold a baccalaureate or higher degree in a specific specialty. Accordingly, the AAO finds that the petitioner has not established its proffered position as a specialty occupation under the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a

bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *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 petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. As discussed previously, the copies of advertisements submitted by the petitioner do not establish a degree requirement in parallel positions as the petitioner failed to establish that the advertisements are from small newly established firms like the petitioner's and that they require at least a bachelor's degree in a *specific specialty* or in the same specialty as the beneficiary's degree. In any event, the record lacks documentary evidence that the advertisements represent a recruiting and hiring practice common to the industry for the types of positions advertised.

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." Although the petitioner has stated that it is a new firm operating in a tough economy, the state of the economy does not demonstrate that the proffered position is unique from or more complex than interior design positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. No evidence was provided that the proffered position is any more unique or complex compared to interior designers described in the *Handbook* for whom a bachelor's degree or its equivalent in a *specific specialty* is not required.

The petitioner stated that it has one other interior designer who also has at least a bachelor's degree in architecture. However, hiring only one other person with at least a bachelor's degree in a specific specialty does not, in and of itself, satisfy the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), as hiring only one other person with this degree does not establish that this is the petitioner's normal requirement. Additionally, the job title of the other employee is interior designer, whereas the job title proffered here is architectural designer/interiors. Since the petitioner did not provide a detailed job description for the other employee, it is not clear that the other employee's duties are the same as or sufficiently similar to those proffered in this petition.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO does not find that the duties reflect a higher degree of knowledge and skill than would normally be required of interior designers not equipped with at least a bachelor's degree, or its equivalent, in a specific specialty. Nor do they represent an amalgam of jobs that would require

the beneficiary to possess skills and qualifications beyond those of an entry level interior designer or one that is described in the *Handbook* as only needing an associate's degree.

Again, it does not appear that the beneficiary's duties will be sufficiently specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO, therefore, concludes that the proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO will consider whether the petitioner failed to submit a valid Labor Condition Application (LCA).

The regulation at 20 C.F.R. § 655.715 defines place of employment as "the worksite or physical location where the work actually is performed" and the regulation at 20 C.F.R. § 655.730(c) stipulates the following:

What should be submitted? Form ETA 9035.

(1) General. One completed and dated original Form ETA 9035 containing the labor condition statements referenced in Secs. 655.731 through 655.734 of this part, bearing the employer's original signature (or that of the employer's authorized agent or representative) and one copy of the completed and dated original Form ETA 9035 shall be submitted to ETA (see paragraph (b) of this section and Sec. 655.760(a)(1) of this part with respect to applications filed by facsimile transmission). Copies of Form ETA 9035 are available at the addresses listed in Sec. 655.720 of this part; photocopies of the form (obtained from any source) also are permitted. Each application shall identify the occupational classification for which the labor condition application is being submitted and shall state:

- (i) The occupation, by Dictionary of Occupational Titles (DOT) Three-Digit Occupational Groups code and by the employer's own title for the job;
- (ii) The number of H-1B nonimmigrants sought;
- (iii) The gross wage rate to be paid to each H-1B nonimmigrant, expressed on an hourly, weekly, biweekly, monthly or annual basis;
- (iv) The starting and ending dates of the H-1B nonimmigrants' employment;
- (v) The place(s) of intended employment; and
- (vi) The prevailing wage for the occupation in the area of intended employment

and the specific source (e.g., name of published survey) relied upon by the employer to determine the wage. If the wage is obtained from a SESA, the appropriate box must be checked and the wage provided; wages obtained from a source other than a SESA must be identified along with the wage;

(2) Multiple positions or places of employment. The employer shall file a separate LCA for each occupation in which the employer intends to employ one or more H-1B nonimmigrants. All places of employment covered by the application must be located within the jurisdiction of a single ETA regional office, or, if the nonimmigrant(s) is(are) to be employed sequentially in various places of employment, the application is to be submitted to the regional office having jurisdiction over the initial place of employment;

The petitioner may place the petitioner at other worksites pursuant to the regulation at 20 C.F.R. § 655.735 which states:

(a) Subject to the conditions specified in this section, an employer may make short-term placements or assignments of H-1B nonimmigrant(s) at worksite(s) (place(s) of employment) in areas not listed on the employer's approved LCA(s) without filing new labor condition application(s) for such area(s).

(b) The following conditions must be fully satisfied by an employer during all short-term placement(s) or assignment(s) of H-1B nonimmigrant(s) at worksite(s) (place(s) of employment) in areas not listed on the employer's approved LCA(s):

(1) The employer has fully satisfied the requirements of Sec. Sec. 655.730 through 655. 734 with regard to worksite(s) located within the area(s) of intended employment listed on the employer's LCA(s).

(2) The employer shall not place, assign, lease, or otherwise contract out any H-1B nonimmigrant(s) to any worksite where there is a strike or lockout in the course of a labor dispute in the same occupational classification(s) as that of the H-1B nonimmigrant(s).

(3) For every day the H-1B nonimmigrant(s) is placed or assigned outside the area(s) of employment listed on the approved LCA(s) for such worker(s), the employer shall:

(i) Continue to pay such worker(s) the required wage (based on the prevailing wage at such worker's(s') permanent worksite, or the employer's actual wage, whichever is higher);

(ii) Pay such worker(s) the actual cost of lodging (for both workdays and non-workdays); and

(iii) Pay such worker(s) the actual cost of travel, meals and incidental or

miscellaneous expenses (for both workdays and non-workdays).

(c) An employer's short-term placement(s) or assignment(s) of H-1B nonimmigrant(s) at any worksite(s) in an area of employment not listed on the employer's approved LCA(s) shall not exceed a total of 30 workdays in a one-year period for any H-1B nonimmigrant at any worksite or combination of worksites in the area, except that such placement or assignment of an H-1B nonimmigrant may be for longer than 30 workdays but for no more than a total of 60 workdays in a one-year period where the employer is able to show the following:

- (1) The H-1B nonimmigrant continues to maintain an office or work station at his/her permanent worksite (e.g., the worker has a dedicated workstation and telephone line(s) at the permanent worksite);
- (2) The H-1B nonimmigrant spends a substantial amount of time at the permanent worksite in a one-year period; and
- (3) The H-1B nonimmigrant's U.S. residence or place of abode is located in the area of the permanent worksite and not in the area of the short-term worksite(s) (e.g., the worker's personal mailing address; the worker's lease for an apartment or other home; the worker's bank accounts; the worker's automobile driver's license; the residence of the worker's dependents).

As stated earlier in this decision, counsel argues on appeal that the vast majority of the beneficiary's work will be in Las Vegas, NV. Given the nature of the petitioner's business and the evidence presented, the AAO finds that, more likely than not, the LCA corresponds to the employment location where the petitioner intends to employ the beneficiary and if the beneficiary does perform any work outside of the metropolitan region of Las Vegas, this employment is likely to meet the short-term criteria under 20 C.F.R. § 655.735(c). Therefore, this basis of the director's decision to deny the petition will be withdrawn.

Beyond the decision of the director, the AAO also finds that the petitioner failed to demonstrate that the beneficiary is qualified to perform in the duties of the specialty occupation.

Pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(v)(A), if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license "prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation."

Pursuant to 8 C.F.R. § 214.2(h)(4)(v)(B), if a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

Where licensure is required in any occupation, 8 C.F.R. § 214.2(h)(4)(v)(E) specifies that the H petition may only be approved for a period of one year or for the period that the temporary license is valid, whichever is longer, unless the alien already has a permanent license to practice the occupation. This regulation also provides that an alien who is accorded H classification in an occupation which requires licensure may not be granted an extension of stay or accorded a new H classification after the one year, unless he or she has (1) obtained a permanent license in the state of intended employment, or (2) continues to hold a temporary license valid in the same state for the period of the requested extension.

The AAO takes administrative notice of the regulations governing registration of interior designers in Nevada. According to Nevada Administrative Code (NAC) 623.860(2), which discusses the Rules of Conduct for registered interior designers in Nevada:

A registered interior designer shall not perform or attempt to perform a professional service relating to interior design unless the registered interior designer:

- (a) Is qualified by education, training and experience to perform the professional service; or
- (b) Associates himself with, or consults with, another person who is qualified to perform the professional service, to the extent necessary to perform that service competently.

(Added to NAC by Bd. of Architecture, Interior Design & Residential Design by R113-99, eff. 12-4-2000).

As Nevada has regulations governing professional services relating to interior design, the petitioner failed to demonstrate that the beneficiary is either registered as an interior designer in Nevada or exempt from obtaining such registration. Therefore, the petitioner failed to demonstrate that the beneficiary qualified to perform the duties of the proffered position.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The appeal will be dismissed and the petition denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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