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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: MAR 05 2013 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director 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.

On the Form I-129 visa petition, the petitioner stated that it is a commercial and residential construction firm. To employ the beneficiary in a position it designates as an architectural designer position, the petitioner endeavors 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, finding that the petitioner failed to establish that the beneficiary is qualified for the proffered position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, counsel submitted a brief and additional evidence.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

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.

Section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A), states that an alien applying for classification as an H-1B nonimmigrant worker must possess "full state licensure to practice in the occupation, if such licensure is required to practice in the occupation." The regulations on the licensure requirements for H-1B and other H nonimmigrant classifications are at 8 C.F.R. §§ 214.2(h)(4)(v)(A) to (E).

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."

In an addendum to the Form I-129 visa petition, the petitioner stated that the duties of the proffered position include, "Provid[ing] architectural design and documentation services for architectural projects, applying knowledge of building codes, regulations and standards." A letter from the

petitioner's president, dated September 20, 2010, which also accompanied the visa petition, reiterates that duty and stated, "the minimum requirement for the job offer is a bachelor's degree in architecture or its equivalent."

On January 11, 2011, the service center issued an RFE in this matter. The service center observed that the petitioner had not submitted any evidence that the beneficiary is licensed to work as an architect in California, the state of intended employment, and requested a copy of the beneficiary's California Architect license, or, if such a license is not required, "a letter from the appropriate State Licensing agency attesting to the beneficiary's exemption."

In response, counsel submitted a letter, dated January 28, 2011, in which he stated:

> The request for a copy of the California's architect license is not relevant in this case since the beneficiary is employed as an architectural designer, not as an architect. For the same reason, the request for a letter attesting to an exemption from the licensing requirement is also not relevant. The beneficiary is not employed as an architect so neither the license [nor] the exemption is relevant.

Counsel did not provide the requested letter from the appropriate state agency stating that the beneficiary, or architectural designers in general, are exempt from licensure as architects, and provided no other evidence in support of either assertion.

Counsel also stated:

> The position demands the educational background required for an architect since the job involves design work, evaluation and analysis of technical problems and code requirements and creating all the working drawings as well as project oversight with the engineering and construction team.

The director denied the visa petition on February 22, 2011. In that decision, the director cited the California Business and Professions Code, Section 5536 Practice Without License or Holding Self Out as Architect, which states, in pertinent part:

> (a) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who is not licensed to practice architecture under this chapter to practice architecture in this state, to use any term confusingly similar to the word architect, to use the stamp of a licensed architect, as provided in Section 5536.1, or to advertise or put out any sign, card, or other device that might indicate to the public that he or she is an architect, that he or she is qualified to engage in the practice of architecture, or that he or she is an architectural designer.

On appeal, counsel reiterated the assertion that an architectural designer position in California does not require licensure as an architect. In support of that position, counsel provided vacancy announcements.

All three of the vacancy announcements are for positions entitled Architectural Designer. One is for a position in New Jersey, and the other two are for positions in California. The announcement of a position in New Jersey has no direct relevance to the instant case as the proffered position is located in California.

The two California vacancy announcements both state that a degree in architecture is required for the positions they announce, but do not state whether or not those positions require licensure as an architect.

Even if those vacancy announcements unequivocally stated that that the positions announced do not require licensure, however, they would not overcome California law. The section of law cited above indicates that holding oneself out to be an architectural designer is illegal if one is not a licensed architect. Therefore, in California, an architectural designer must be a licensed architect.

Although the proffered position requires licensure as an architect, the record does not indicate that the beneficiary is a licensed architect. The petitioner has not shown, therefore, that the beneficiary is qualified to work in the proffered position. The appeal will be dismissed and the visa petition denied pursuant to section 214(i)(2)(A) of the Act and 8 C.F.R. § 214.2(h)(4)(v)(A).

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. The appeal will be dismissed and the petition denied.

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