



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 21702782

Date: JULY 26, 2022

Appeal of Texas Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner seeks to extend the Beneficiary's temporary employment under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both: (a) the theoretical and practical application of a body of highly specialized knowledge; and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Texas Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the position in the petition required a license but the Petitioner did not establish that the Beneficiary possessed a license. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will sustain the appeal.

On appeal, the Petitioner reiterates that they designated the Architects, Except Landscape and Naval Standard Occupational Classification (SOC) code (17-1011) on the U.S. Department of Labor's ETA Form 9035 & 9035E, Labor Condition Application for Nonimmigrant Workers. But the actual position the Beneficiary already occupied was an architectural designer, a lesser position than an architect. And even though the position continued to require a five-year bachelor's degree in architecture, the relevant state authorities did not require occupants of this position to obtain licensure, as we explain below.

We do not agree with the Director that the Petitioner did not provide any evidence the state allows an individual without a license to fully practice the occupation under the supervision of a licensed senior or supervisory personnel. The Texas Administrative Code indicates organizations that employ at least one full-time registered architect, or associates with at least one architect, may employ those who are not registered architects (nonregistrant's) as long as a registered architect exercises "responsible charge" through "supervision and control" over the nonregistrant's work. *See* 22 Tex. Admin. Code § 1.123(b); 22 Tex. Admin. Code § 1.5(53), (62). As the Director noted, the Petitioner provided the

license belonging to the Beneficiary's supervisor demonstrating this employer complied with the state code described above.

Ultimately, even though the state where the Beneficiary would work generally requires licensure to practice in the occupation, it allows individuals without licensure to work under the supervision of licensed senior or supervisory personnel in that occupation in accordance with 8 C.F.R. § 214.2(h)(4)(v)(C)(I). The record establishes that the Beneficiary would do so. As a result, the position in the petition did not require the Beneficiary to obtain a license to qualify for the position.

ORDER: The appeal is sustained.