

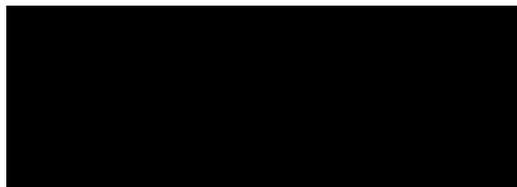
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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: EAC 02 264 50634 Office: VERMONT SERVICE CENTER Date: **AUG 24 2005**

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Handwritten signature of Robert P. Wiemann in cursive.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director initially approved the nonimmigrant visa petition. The director subsequently revoked the approval on the ground that the position in which the petitioner employed the beneficiary is not a specialty occupation. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a law firm. It seeks to employ the beneficiary as a legal management specialist and to classify her 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 found that the record failed to establish that the proffered position is a specialty occupation.

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.

As provided in 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 approval notice (Form I-797B), (3) the notice of intent to revoke (NOIR), (4) the petitioner's response to the NOIR; (5) the director's decision; and (6) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In a letter accompanying Form I-129 the petitioner described itself as a general practice law firm with two lawyers and three paralegals in its U.S. office, a foreign office in Manila, and clients in both the United States and the Philippines. To facilitate the prospective expansion of the firm's business, the petitioner stated that it had an immediate need for the beneficiary's services as a legal management specialist to perform the following duties:

1. Network and generate Philippine related cases.
2. Monitor status of Philippine related cases.
3. Meet with and interview clients and witnesses.
4. Liaise with officials of Philippine Embassy, consular offices and pertinent agencies.
5. Conduct legal research, draft and prepare pleadings, legal memoranda, etc.
6. Monitor billing and collections for pertinent cases.
7. Serve as coordinator for U.S.-Philippine immigration-related cases.

The petitioner asserts that the beneficiary is qualified for the position by virtue of her bachelor of science in business administration, with a major in management, from Ateneo de Davao University in the Philippines, granted on March 21, 1987, together with her subsequent work experience. According to an educational credentials evaluation service in Coral Gables, Florida, the beneficiary's degree is equivalent to a bachelor of business administration from an accredited college or university in the United States.

The director initially approved the petition. By letter dated May 23, 2003, however, the director advised counsel of his intention to revoke the approval on the basis of an investigative report casting doubt on the beneficiary's qualifications for the proffered position. As explained by the director, "[t]he beneficiary has a degree in business and is performing duties related to a lawyer." A copy of the investigative report was enclosed with the NOIR, and the petitioner was given 30 days to submit additional evidence.

In response to the NOIR, counsel asserted that the minimum requirement for the proffered position is a bachelor's degree in business administration plus at least three years of work experience with a Philippine government agency or with a law office in a paralegal or administrative capacity. Counsel emphasized that the beneficiary would not be functioning as an attorney, but would be assisting attorneys and be under their direct supervision. According to counsel, the beneficiary is qualified to perform the services of the proffered position on the basis of her degree – the equivalent of a bachelor of business administration from a U.S. college or university – and her work experience in the Philippine government.

On September 4, 2003 the director issued a decision revoking the approval of the petition on the ground that the legal management specialist does not qualify as a specialty occupation. After stating that the record failed to establish whether the duties of the proffered position were those of a legal management specialist or a legal intern, and noting that the beneficiary lacked a state license to practice as a lawyer,¹ the director appears to have concluded that the proffered position combines the duties of a paralegal, legal assistant, legal secretary, and legal intern. The director found the evidence of record unpersuasive that a baccalaureate or higher degree in a specific specialty is required to perform the duties of the job, or that

¹ A lawyer's position is generally a specialty occupation. Though the director stated at one point in the decision that it "appears [the beneficiary] will be performing the duties of a lawyer," he later concluded that the duties of the position did not describe a specialty occupation. Therefore, the beneficiary's qualifications to practice as a lawyer would not be relevant.

director presumably found the beneficiary not qualified for the position, and that the petition thus violated paragraph (h) of this section, as set forth at 8 C.F.R. § 214.2(h)(11)(iii)(A)(5). In the revocation itself the director found the position not to be a specialty occupation and, without specifically explaining the basis therefor, revoked the approval presumably under the same subsection, 8 C.F.R. § 214.2(h)(11)(iii)(A)(5), since the petition thus violated paragraph (h). While the NOIR and the revocation involved the same regulatory ground for revocation – 8 C.F.R. § 214.2(h)(11)(iii)(A)(5) – the regulatory sections violated are different. The regulations governing beneficiary qualifications are found at 8 C.F.R. § 214.2(h)(4)(iii)(C); those governing specialty occupations are found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Had the director cited the applicable regulations in the NOIR, those regulations would govern any decision on revocation after consideration of the rebuttal evidence. Likewise, the “detailed statement of the grounds for revocation” required in the NOIR at 8 C.F.R. § 214.2(h)(4)(iii)(B) must be related to the final grounds of revocation.

Thus, the decision to revoke the previously approved petition was based on a different ground than the one referenced in the NOIR. As a consequence of this defect in the revocation proceeding the director’s decision must be withdrawn and the petitioner’s appeal sustained. The petition stands approved, as originally decided by the director.

In his discretion the director may reinstitute revocation proceedings that comply with the notice requirements of 8 C.F.R. § 214.2 (h)(11)(iii)(A) and (B).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained. The petition is approved.