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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 04 197 53343 Office: CALIFORNIA SERVICE CENTER Date: **AUG 11 2006**

IN RE: Petitioner:  
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:

SELF-REPRESENTED.

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a law firm that seeks to employ the beneficiary as a legal consultant. The petitioner, therefore, endeavors to classify the beneficiary 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's first request for additional evidence, dated July 13, 2004; (3) the petitioner's response to the director's request; (4) the director's first denial letter, dated September 29, 2004; (5) the director's second request for evidence, dated October 13, 2004; (6) the petitioner's response to the director's request; (7) the director's second denial letter, dated February 15, 2005; and (8) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on two grounds: (1) that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation, and (2) that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation.

According to the petitioner's September 14, 2004 response to the director's first request for additional evidence, 35% of the duties of the proposed position would consist of researching various legal issues of Filipino law relating to employers' and individual clients' rights and obligations, including case law, treatises, regulations, statutory codes, and other legal texts, as well as issues relating to corporate law, family law, adoptions, divorce, criminal law, and dual citizenship; 20% of the duties would consist of composing legal memoranda, utilizing her research findings and facts, regarding Filipino law and regulations to prepare substantive legal memoranda, points and authorities, legal briefs, and documentation, for review by licensed attorneys; 20% of the duties would consist of researching and consulting matters of Filipino law for clients at the petitioner's office in Manila; 10% of the duties would consist of assisting licensed attorneys by researching and preparing legal briefs, strategies, arguments, and testimony in preparation for the presentation of cases before the United States Embassy, CIS, immigration courts, judicial courts in the United States and the Philippines, and other agencies or venues; 5% of the duties would consist of evidence-gathering for civil, criminal, and other cases for immigration purposes, as well as advising clients on collecting evidence and information for petitions, interviews, and court hearings; 5% of the duties would consist of preparing clients for court appearances and interviews before CIS and consular posts, reviewing hardship discussions, country conditions, and eligibility for petitions; and 5% of the duties would consist of establishing and verifying the bases for various Filipino legal proceedings and strategies, such as examining the substantive effects of exhausting all possible legal remedies before embarking on courses of action.

As noted previously, the director denied the petition on two grounds: (1) that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation, and (2) that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation. In finding that the proposed position does not qualify for classification as a specialty occupation, the director found that the duties of the proposed position were essentially those of a paralegal. In finding that the beneficiary does not qualify to perform the duties of a specialty occupation, the director found that although the proposed position is essentially that of a paralegal, the beneficiary did not qualify to perform its duties because she lacks licensure to practice law in the State of California.

The AAO will first address the issue of whether the petitioner's proposed position qualifies for classification as a specialty occupation. 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 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 proposed position.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a showing that the nature of the specific duties of the proposed position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The AAO disagrees with the director's characterization of the duties of the proposed position as essentially those of a paralegal. The petitioner has submitted detailed information regarding the duties of its proposed position, and they exceed the occupational scope of those typically performed by paralegals. That description of the duties of the proposed position, in combination with this particular record's information about the petitioner's business, establishes that the duties of the proposed position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

Accordingly, the proposed position qualifies for classification as a specialty occupation.

The second issue to be addressed on appeal is whether the beneficiary qualifies to perform the duties of a specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), in order to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

According to an evaluation contained in the record of proceeding, the beneficiary possesses the equivalent of a juris doctor degree from a regionally accredited college or university in the United States. She therefore qualifies under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The director did not question whether the beneficiary qualifies under this criterion, however. Rather, he found her unqualified under 8 C.F.R. § 214.2(h)(4)(v). Pursuant to 8 C.F.R. § 214.2(h)(4)(v), if the State requires licensure in order to work in the specialty occupation, the beneficiary must possess the license prior to approval of the H-1B petition:

- (A) General. 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.

(B) Temporary licensure. 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.

(C) Duties without licensure. In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

(D) H-1C nurses. For purposes of licensure, H-1C nurses must provide the evidence required in paragraph (h)(3)(iii) of this section.

(E) Limitation on approval of petition. Where licensure is required in any occupation, including registered nursing, 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. 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 obtained a permanent license in the state of intended employment or continues to hold a temporary license valid in the same state for the period of the requested extension.

According to the 2006-2007 edition of the *Handbook*:

To practice law in the courts of any state or other jurisdiction, a person must be licensed, or admitted to its bar, under rules established by the jurisdiction's highest court. All States require that applicants for admission to the bar pass a written bar examination; most States also require applicants to pass a separate written ethics examination.

The director found that the duties of the proposed position involve the practice of law. As the beneficiary does not possess California licensure, he found, she "would not be able to perform a majority of the proffered duties."

The AAO disagrees. The duties of the proposed position do not involve the practice of law. While she would not be able to perform many of the duties without supervision of a licensed attorney, the duties of the position as they were set forth by the petitioner explicitly involve supervision by a licensed attorney. Therefore, the AAO agrees with the petitioner that California bar licensure is not required. Therefore, the beneficiary qualifies to perform the duties of a specialty occupation, and the petition was improperly denied.

Finally, the AAO turns to the director's citation of 8 C.F.R. § 103.2(b)(14), which states that the failure to submit requested evidence which precludes a material line of inquiry is grounds for denying a petition.

In his October 13, 2004 request for additional evidence, the director requested three items: (1) evidence that the beneficiary is admitted to practice and is in good standing as an attorney in a foreign country; (2) evidence that the beneficiary has a currently effective certificate of registration as a registered foreign legal consultant from the State Bar of California, in compliance with Rule 988 of the California Rules of Court; and (3) if the petitioner were to contend that the beneficiary is exempt from Rule 988, a letter from the State Bar of California attesting to the beneficiary's exemption from Rule 988.

In response, the petitioner submitted a copy of a letter it had sent to the State Bar of California, dated November 22, 2004. In this letter, the petitioner requested a written statement from the State Bar clarifying whether the beneficiary required registration under Rule 988. In its December 21, 2004 response, the State Bar stated the following:

Employees of the State Bar are not authorized or permitted to offer advisory opinions or to provide legal advise [sic] or counsel nor to express the opinion of the State Bar on this or other matters. As such, we cannot meet your request to provide you with a written legal advisory opinion regarding your question. If you do wish to obtain a legal opinion, you may wish to consult with an attorney who is licensed to practice law in California who specializes in State Bar admissions matters.

The State Bar Standing Committee on Professional Responsibility and Conduct (COBRAC) does issue advisory ethics opinions which are approved and published by the State Bar Board of Governors. Your question, however, does not meet the guidelines for having a COBRAC ethics opinion request considered.

As the State Bar of California was unwilling to provide the type of letter requested by the director, the petitioner consulted with two attorneys whose practices focus on Bar-related issues, as suggested by the Bar. Both of these attorneys, [REDACTED] issued written opinions that were submitted to the director by the petitioner. Both Ms. [REDACTED] and Mr. [REDACTED] concluded that the beneficiary in this case does not require registration under Rule 988.

In citing 8 C.F.R. § 103.2(b)(14) as a basis of denial, the director stated that the petitioner had not submitted evidence of the beneficiary's registration under Rule 988 or a letter from the State Bar attesting that the beneficiary does not require such registration. He did not indicate why the opinions of Ms. [REDACTED] and Mr. [REDACTED] were insufficient, nor did he provide any direction as to what course of action the petitioner should have taken, since the State Bar of California clearly indicated that it would not issue the letter sought by the director.

The AAO agrees with the petitioner, Ms. [REDACTED] and Mr. [REDACTED] that the beneficiary does not require registration under Rule 988. Registration under Rule 988 allows a foreign-trained attorney to "render legal services"<sup>1</sup> in California. However, as stated by the petitioner and demonstrated by this record of proceeding, the petitioner does not seek to have the beneficiary render legal services. Rather, she would be working under the supervision of a licensed attorney. Also, it is unclear to the AAO why, if the proposed position were actually that of a paralegal, as asserted by the director in his denial, the beneficiary would require a license to practice law.

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<sup>1</sup> See 2006 California Rules of Court, Rule 988(d), <http://www.courtinfo.ca.gov/rules/titlethree/title3-103.htm>.

The petitioner has overcome each ground of denial. The petitioner has demonstrated that the proposed position qualifies for classification as a specialty occupation, and that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, the director's decision will be reversed and the petition approved.

The burden of proof in these proceedings rests solely with the petitioner. 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.