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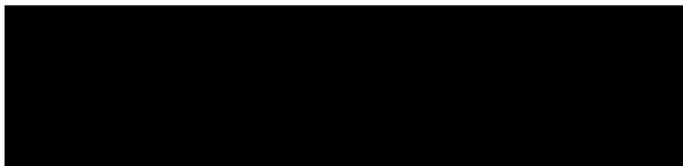
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: SRC 06 005 50091 Office: TEXAS SERVICE CENTER Date: JUL 02 2007

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.

James Blinzinger, for

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 law clerk. 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, received on October 6, 2005; (2) the director's request for additional evidence, dated October 27, 2005; (3) the petitioner's response to the director's request; (4) the director's denial letter, dated May 2, 2006; and (5) the Form I-290B and supporting documentation, filed on June 1, 2006. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on May 2, 2006, concluding that the petitioner had failed to establish that the 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 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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.

The petitioner, a law firm established in 1983, has three employees and a gross annual income of \$208,721. It seeks to employ the beneficiary as a law clerk. In its September 28, 2005 letter of support, the petitioner states that the duties of the proposed position as follows:

- (1) Draft pleadings, motions, and other legal documents relevant to court actions
- (2) Prepare briefs or arguments for review, approval, and use by attorney
- (3) Interview clients to gather information and generally explain how law can be applied to clients’ situation
- (4) Conduct investigative research such as UCC financing statement check, lien status check
- (5) Research legal authorities and check the current status of major case laws
- (6) Maintain client’s case file and case correspondence
- (7) Analyze the merits of each case and propose legal actions to be taken to attorneys
- (8) Communicate with clerks of court to facilitate the proceedings.

The petitioner stated that it required an individual with a Juris Doctor to perform the duties of the position.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.¹

¹ The director noted in his decision that the petitioner attempted to amend the proffered position in its response to the director’s request for evidence from law clerk to lawyer. As noted in the decision, when responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position’s title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director’s request for further evidence did not clarify or provide more specificity to the original duties of

On appeal, the petitioner asserts that the proposed position is that of a law clerk, rather than that of a legal assistant, and thus qualifies as a specialty occupation.

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 those duties is usually associated with the attainment of a baccalaureate or higher degree.

On appeal, the petitioner asserts that that the duties of a law clerk cannot be performed by candidates without “substantial knowledge in law, and skills to analyze the merits of each case under the legal principles.” On appeal, the petitioner describes the nature of the specific duties performed by the law clerk as follows:

To draft pleadings and motion[s] to be served with the court, one must have the ability to identify viable issues in the factual setting and appropriate legal claims or defenses for the issues. Preparation of briefs and arguments requires thorough knowledge in legal principle, public policy, legislative history, consequences for judicial decisions, not to mention the current law and the merits of each case. To research legal authorities and check the currency of case law, one must have in-depth knowledge of major case laws in the past, be able to differentiate the holdings of each case from dicta, and identify the scope of each decision and the effect to other past case laws. Legal analysis of merits of each case can be performed when one can identify the elements of cause of actions to be sought in each case and the procedural steps to be taken to pursue one’s legal right. . . .

The AAO disagrees with the director’s characterization of the duties of the proposed position as essentially those of a legal assistant. The petitioner has submitted detailed information regarding the duties of its proposed position, as discussed above, and they exceed the occupational scope of those typically performed by legal assistants who handle the administrative and clerical functions for a law office. 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 Juris Doctor degree.

The petitioner has overcome the grounds of the director’s denial of the petition, and has demonstrated that the proposed position qualifies for classification as a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

the position, but rather added new duties to the job description and changed the title of the position. Therefore, the analysis of this petition will be based on the job description submitted with the initial petition, and the petitioner’s attempted amendment will not be considered.

The AAO notes that the beneficiary earned a Juris Doctor from Georgia State University in 2005. He therefore qualifies to perform the duties of this specialized occupation.

The petitioner has established that the proposed position qualifies for classification as a specialty occupation and that the beneficiary qualifies to perform its duties. 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.