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U.S. Citizenship
and Immigration
Services

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FILE: SRC 06 078 53155 Office: TEXAS SERVICE CENTER Date: JUN 02 2008

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 documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Per Michael T. Kelly
Robert P. Wiemann, 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.

The petitioner is a law firm and seeks to employ the beneficiary as a foreign legal specialist. The petitioner 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 director denied the petition because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

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 are 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) the Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a foreign legal specialist. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. In the petitioner’s response to the director’s request for evidence, the petitioner states that the beneficiary would:

- Strengthen and develop the petitioner’s deportation section by analyzing various decisions by the Board of Immigration Appeals and verifying how clients can benefit from the case law;
- Advise senior partners on Brazilian and international law regarding international business transactions, international transactions, North America Free Trade Agreement (NAFTA) Latin America, and advise in the basic legal dimensions of NAFTA and its effects on trade, investment, licensing and law reform in the Americas;
- Conduct legal research and draft memoranda to the international immigration group for use in developing strategies for clients; and
- Provide legal background of Brazilian law to clients.

The petitioner’s support letter of January 10, 2006, listed the beneficiary’s duties as follows:

- Apply international legal knowledge on developing the company’s business in connection with NAFTA and other bilateral agreements;
- Serve as liaison for English, Spanish and Portuguese speaking clients, utilizing the acquired legal knowledge of various legal systems;
- Develop and expand the international legal area using knowledge in the international market, specifically in relations between the Hispanic community in the United States;

- Utilize foreign language proficiency in translating legal documents such as by-laws, articles of incorporation, birth certificates, marriage licenses, divorce decrees, deeds of sale, and others;
- Analyze on a case-by-case basis immigration matters and case law;

Interview clients regarding family based immigration, employment based immigration and deportation proceedings under the supervision of an attorney; and

- Assist attorneys in drafting, preparing and submitting memorandums of law, motions, appeals, cancellation of removal, adjustment of status, and petition for alien relative packets, among others, for immigration authorities and immigration courts.

The petitioner requires a minimum of a bachelor's degree for entry into the proffered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position fall within those noted for law clerks. The *Handbook*, 2008 – 09 edition, states that law clerks assist lawyers or judges by researching or preparing legal documents. They may meet with clients or assist lawyers and judges in court. The *Handbook* notes that the most significant source of education or training for law clerks is a bachelor's degree, but does not indicate that the degree need be in any specific specialty. Law clerks are usually students fulfilling the requirements of a Juris Doctor degree, or law school graduates fulfilling attorney licensing requirements. Indeed, the record indicates that the beneficiary has applied to take the New York bar exam. While a bachelor's degree is a prerequisite for entry into law school, the degree requirement is not restricted to any particular field of study. The petitioner has, accordingly, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations, and thus satisfies the first prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). In support of that assertion the petitioner submits: the affidavit of [REDACTED], the affidavit of [REDACTED]; job advertisements for legal consultant and related positions; recruitment efforts of law firms seeking international LLM students; Rule XIV amendment for Foreign Legal Consultants from the Texas Board of Law Examiners; and the opinion of Victor M. Goode, Associate Professor of Law at the CUNY School of Law, Queens College, NY. The documents submitted do not establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations, and are individually discussed as follows:

AFFIDAVITS

- Laurie Snider

Ms. Snider submitted a sworn affidavit stating that she is an American Citizen and licensed attorney in Texas. She states that, based upon her experience and knowledge, it is common in the legal industry to require a minimum of a bachelor's degree, or the foreign equivalent, for the position of

legal specialist. She opines that the position of legal specialist falls between a law clerk and a lawyer, and as such, specialized skills and knowledge in the field are required.

The affidavit of Ms. Snider is of little evidentiary value in this instance, and as such, shall be afforded little weight. The affiant refers to the position of “legal specialist,” but does not indicate that the position she refers to is substantially similar to the position offered to the beneficiary in this instance. Ms. Snider does not state that she has reviewed the job description of the beneficiary nor any of the documentation submitted by the petitioner in support of the Form I-129 petition. Further, the affiant provides no basis for her opinion other than reference to her unsubstantiated knowledge and experience. She makes no reference to any labor market survey, study, or any other source of employment-based labor market information to support her opinion. As previously stated, the AAO finds the duties of the proffered position to be those of a law clerk, which generally requires a baccalaureate level education, but not a degree in any particular educational discipline. The affiant’s opinion is at odds with the *Handbook’s* statements concerning the educational requirements of the position, and the affiant does not offer any basis for her differing conclusions relative to the educational requirements of the position. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

- Alfredo Lozano, J.D.

Mr. Lozano submitted a sworn affidavit stating that he is a licensed attorney in Texas. He states that he has worked in the past with foreign attorneys (Foreign Legal Specialists) and that from his working experience, it is necessary that the holders of the referenced positions possess a baccalaureate degree from their prospective countries of origin, and preferably a master of law degree from an institution of higher education in the United States.

The affidavit of Mr. Lozano is of little evidentiary value in this instance, and as such, shall be afforded little weight. The affiant refers to the position of “foreign legal specialist,” but does not indicate that the position he refers to is substantially similar to the position offered to the beneficiary in this instance. Mr. Lozano does not state that he has reviewed the job description of the beneficiary nor any of the documentation submitted by the petitioner in support of the Form I-129 petition. Further, the affiant provides no basis for his opinion other than reference to his unsubstantiated knowledge and experience. He makes no reference to any labor market survey, study, or any other source of employment-based labor market information to support his opinion. As previously stated, the AAO finds the duties of the proffered position to be those of a law clerk, which generally requires a baccalaureate level education, but not a degree in any particular educational discipline. The affiant’s opinion is at odds with the *Handbook’s* statements concerning the educational requirements of the position, and the affiant does not offer any basis for his differing conclusions relative to the educational requirements of the position. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Job Advertisements For Legal Consultants and Related Positions

- The petitioner provided a copy of the following job advertisements:

In-house Mexican law specialist with Delgado, Acosta, Braden & Jones

This advertisement recruits an in-house Mexican law specialist and client liaison to assist clients in Mexican legal matters, especially banking law, energy law, and government procurement law matters. The advertised position would obtain documents and information needed to pursue U.S. legal remedies for Mexican clients, translate documents, and liaise with Spanish-speaking clients and high-level Mexican Government officials on clients' behalf. The position advertised requires the successful applicant to coordinate legal matters with correspondent Mexican counsel, provide administrative and legal support in litigation and consultation with Mexican clients, promote the firm's legal services in Mexico focusing on financial institutions, and provide support in international litigation and corporate law services to Mexican clients. The advertised position requires a bachelor's degree in judicial sciences or Mexican law or a foreign equivalent, with a minimum of three years experience providing legal services to Mexican financial institutions, and detailed knowledge of the Mexican banking industry, Mexican banking law, and government procurement law.

This advertisement does not establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. The position described in the advertisement is not similar to the position offered to the beneficiary in this proceeding. The proffered position deals with international banking law, and specifically, Mexican banking law and related matters. The petitioner in this instance describes his law (immigration) practice as one which represents clients in matters related to family based immigration, employment based immigration, asylum cases and deportation proceedings for foreign nationals. The positions are not similar in nature, and do not require the same knowledge base to perform the duties of the respective positions.

Foreign Legal Consultant with Noronha Advogados

This advertisement seeks a foreign legal consultant with expertise in Brazilian law, and one that is registered with the California State Bar as a "Foreign Legal Consultant in the Law of Brazil." The position requires the applicant to be able to practice law in California, within the parameters of foreign legal consultant registration with the California State Bar.

The position offered to the beneficiary in this instance, does not require registration as a foreign legal consultant with the State Bar of Texas, permitting the practice of law under rules promulgated by the Texas Supreme Court. The positions are not similar and does not establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations

Foreign Legal Consultant with Steel Hector & Davis, LLP

This position requires a Venezuelan law degree and a Master of Laws degree from an accredited U.S. university, and five years experience as a Venezuelan corporate lawyer handling international

lending, project financing, debt to equity swaps, international trade financing, joint ventures, distribution, licensing, mergers and acquisitions. The successful applicant would provide legal advice on Venezuelan corporate law for the petitioner. The person hired would perform legal research on Venezuelan corporate law, advise his or her employer's multinational clients on issues of Venezuelan law affecting their business operations, draft legal memoranda, review contracts, manage negotiations involving Venezuelan law, and work with his employer's international corporate lawyers to develop strategies for directing corporate transactions.

The position which is the subject of this advertisement is not similar to the position offered to the beneficiary. As previously stated, the petitioner describes his law (immigration) practice as one which represents clients in matters related to family based immigration, employment based immigration, asylum cases and deportation proceedings for foreign nationals. The positions are not similar in nature, and do not require the same knowledge base to perform the duties of the respective positions.

Recruitment efforts of law firms seeking international LLM students

The petitioner submitted recruitment documentation from the following firms: Curtis, Mallet-Prevost, Colt & Mosle, LLP; Dykema Gossett, PLLC; and Steptoe & Johnson, LLP, in an effort to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. The material submitted details the programs offered by these major law firms in temporary employment for foreign attorneys who will offer services within a legal division or specialty of the firm. The documentation does not demonstrate that the positions discussed by the major firms are similar in nature to the position offered to the beneficiary. Further, the law firms named are not similar in nature and scope to that of the petitioner. The documentation does not establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations because the positions discussed are not parallel positions, and the listed firms are not similar to the petitioner's firm.

The same is true regarding the profiles of foreign legal specialists submitted by the petitioner who are employed by various major law firms. The documentation submitted is not for firms similar in nature and scope to that of the petitioner, and the documentation does not establish that the positions held by the foreign legal specialists are parallel to that the beneficiary will hold in this instance.

Rule XIV amendment for Foreign Legal Consultants from the Texas Board of Law Examiners

The petitioner submitted a copy of the above referenced rule which permits the certification of Foreign Legal Consultants to practice law in Texas, under certain conditions, without examination. This rule is inapplicable to the beneficiary in this instance as the beneficiary will not work as an attorney, according to the petitioner. If that were the case, licensing would be required and the beneficiary would not be qualified to perform the duties of the position because he is not licensed. The position offered by the petitioner, as described by the petitioner in the petitioner's business environment, is that of a law clerk which does not require licensing or a degree in a specific specialty.

Opinion of Victor M. Goode

The opinion writer is an associate professor of law at the CUNY School of Law, Queens College, NY. Professor Goode states that the proffered position, in his opinion, “is clearly a specialty position, and certainly may require the services of someone with at least a Master’s Degree in Law.” He states that the skills required to develop the petitioner’s business in connection with the NAFTA and other agreements, serve as a liaison with English, Spanish and Portuguese speaking clients, develop and expand the international legal area, analyze immigration matters and case law, interview clients regarding immigration issues, and assist attorneys in drafting, preparing, and submitting memoranda are often taught in Master’s level courses in law, and related areas of study. Professor Goode states that companies who seek to employ a Foreign Legal Specialist may seek prospective candidates who possess an LLM from an accredited institution of higher learning, and that the skills, knowledge, and analytical thinking acquired through the acquisition of a Master’s degree of Law, or a related field may be considered necessary by people in the industry seeking to hire a Foreign Legal Specialist.

Professor Goode listed some generalized duties of the proffered position. He states that those responsibilities “may,” in a particular office, call for a candidate who has knowledge of legal practices and techniques in Latin America and who is capable of providing knowledgeable assistance to the management of the law firm or its clients. He further states that companies seeking to employ Foreign Legal Specialists “may” seek candidates who possess an LLM, and that the skills, knowledge, and analytical thinking acquired through the acquisition of a Master’s Degree in Law “may” be considered necessary by people in the industry seeking to hire a Foreign Legal Specialist. These rather generalized statements were made in reference to the generalized listing of duties noted by the opinion writer in his opinion. Professor Goode did not state how the duties listed were related to the petitioner’s law practice, which was described by the petitioner as one which represents “clients in matters related to family based immigration, employment based immigration, asylum cases, and deportation proceedings for foreign nationals from different countries.” The record does not establish, and Professor Goode does not state, that the petitioner has any business involving NAFTA or other bilateral agreements. The record does not establish, nor does Professor Goode state, that the duties of the proffered position require a degree in a specific specialty to develop and expand “the international legal area using knowledge in the international market. . . .” The opinion of Professor Goode does not state that the duties of the proffered position require a degree in a specific specialty, or that such a degree is common to the industry in parallel positions among similar organizations. Nor does the professor establish that premise.

The petitioner has not satisfied the first prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner indicates that it normally requires a degree or its equivalent for the proffered position. In support of that proposition, the petitioner lists current and former employees who presently or have in the past worked for the petitioner in the offered position. The petitioner lists eight employees, noting that all hold a Master’s degree in Law and/or a Juris Doctor, except for one employee who held a bachelor of art’s degree. From the petitioner’s listing, it is apparent that a law degree is not always required for the position as Martha Cortes holds only a Bachelor of Arts degree. Further, the petitioner submitted only two copies of the diplomas held by the present or former employees. None of the applicant’s foreign degrees were supported

by credential evaluations to establish that they are equivalent to a bachelor's degree in a specific field of study from an accredited college or university in the United States. It cannot be determined from the record where the listed master's degrees were obtained. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). *The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.* To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not establish that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific educational discipline (the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), or that they are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty (8 C.F.R. § 214.2(h)(4)(iii)(A)(4)). As described by the petitioner, the duties appear to be routine for law clerks in immigration practices performing the services described by the petitioner for his business. The record does not establish that the performance of the duties of the proffered position requires an undergraduate degree in any particular educational discipline, or completion of a higher degree in a specific specialty. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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