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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: WAC 98 032 50730 Office: California Service Center

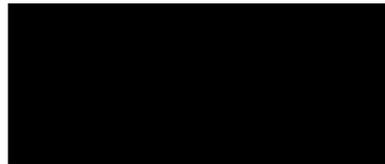
Date: MAY 2 2001

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director of the California Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen and reconsider. The motion will be granted and the previous decisions of the director and the Associate Commissioner will be affirmed.

The petitioner is a law office management firm with two employees which seeks to employ the beneficiary as a legal researcher for a period of three years. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel argued that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

On motion, counsel argues that the legal researcher position is a specialty occupation within the meaning of the regulations inasmuch as new evidence shows that the position is so complex and unique that it can be performed only by an individual with a baccalaureate degree in law.

Upon initial submission, the petitioner described the duties of the offered position as follows:

[The beneficiary] will function in the ... occupation of legal researcher ... researching and analyzing law sources such as statutes, decisions of the U.S. Supreme court, California Supreme Court, the Federal District courts and superior courts, legal articles, treatises, various state constitutions as well as the U.S. constitution and legal codes. He is also expected to assist in the preparation of legal documents, such as briefs, pleadings, appeals, wills and contracts, articles of incorporation and other deeds and instruments for review, approval and use of attorneys.

On motion, counsel explains that the duties to be performed by the beneficiary would include not only researching the laws and legal codes of both the United States and the Philippines but interpreting them as well. Counsel further explains that the incumbent would also determine the effect of the foreign (Philippine) law in relation to each particular issue which arises with each client's case and prepare memoranda of points and authorities in accordance with such findings.

Based on the information provided by the petitioner on motion, it is determined that there have been material changes in the terms and conditions of the beneficiary's proposed employment with the

firm. Since the circumstances stated in the initial petition have changed significantly, a new petition reflecting the new facts may be presented to the director for consideration. Should the director deny the new petition, that decision could then be appealed to this jurisdiction. The Administrative Appeals Unit does not make initial determinations on visa petitions.

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 not sustained that burden.

ORDER: The order of March 31, 1998 dismissing the appeal is affirmed.