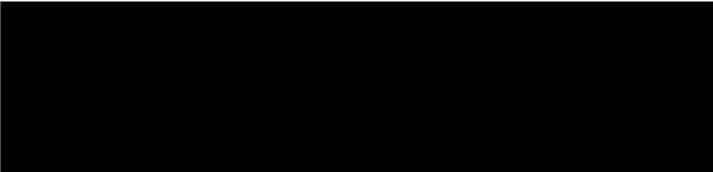




U.S. Citizenship
and Immigration
Services



FILE: WAC 02 206 50085 Office: CALIFORNIA SERVICE CENTER Date: AUG 04 2004

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.

A handwritten signature in cursive script that reads "Robert P. Wiemann".

for Robert P. Wiemann, Director
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 The decision of the director will be withdrawn and the matter will be remanded for further action.

The petitioner is a law firm. It seeks to employ the beneficiary as a foreign 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 director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation, and submits further documentation.

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.

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 proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the petitioner's letter of support dated May 29, 2002; (3) the director's request for additional evidence; (4) the petitioner's letter that responds to the director's request; (5) the director's denial letter; and (6) Form I-290B and 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 consultant. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letters in support of the petition and in response to the director's request for further evidence. According to the initial petition, the beneficiary would provide various legal advisory and consultancy services to the petitioner's U.S.-based Filipino clients. Such consultancy services would include preparing legal documents, advising clients as to their legal rights and practices, gathering evidence, and preparing affidavits in Philippine courts and before Philippine government agencies, among other services. The petitioner indicated that the position required a bachelor's degree in law or a *juris doctor* degree and a valid license to practice law in the Philippines. The petitioner also indicated it preferred two years of legal work experience.

The director found that the proffered position was not a specialty occupation and stated that the duties of the position appear to be those of a paralegal. The director referred to the training requirements for this classification as described in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and determined that the *Handbook* did not indicate that a baccalaureate degree in a specialized area was required for entry into a paralegal position. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner reviews the job duties for the proffered position and states that the position is a foreign legal consultant, and not a paralegal position. The petitioner cites two prior AAO decisions that approved H-1B petitions for legal consultant positions. The petitioner also states that the position does not require any United States legal licensing because the beneficiary would not be engaged in a bona fide practice of law in the United States. The petitioner states that it does not require a United States or a State of California license to practice law since the proffered position's duties do not involve the laws of the United States or of the State of California. The petitioner further states that, although its clients are U.S. citizens or U.S. residents, their property interests, real and personal, are in the Philippines. According to the petitioner, any transactions that the beneficiary would perform would have to conform to Philippine laws and jurisprudence. For this reason, the petitioner states that it requires that the beneficiary possess a valid Philippines license to practice law. The petitioner also submits several documents that list areas of Philippine jurisprudence.

Counsel asserts that the AAO has already determined that the proffered position is a specialty occupation and identified two AAO decisions that purportedly examined the position of legal consultant. This record of proceeding does not, however, contain all of the supporting evidence submitted to the AAO in the prior cases. In the absence of the corroborating evidence, the record does not contain sufficient documentation to substantiate the assertion of counsel as to the relevance between the two prior AAO decisions and the instant petition. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Upon review of the record, the petitioner has established the first criterion outlined at 8 C.F.R. § 214.2(h)(4)(iii)(A), a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Therefore, the proffered position is a specialty occupation.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The record is not clear as to why the director determined the position was a paralegal. With regard to the proffered position, the petitioner identified it as a foreign legal consultant but described duties that are analogous to the duties of the *Handbook* classification of lawyer. In particular, the stated duties of advising clients in matters of law would distinguish the proffered position from that of a paralegal. Further, a foreign legal consultant in the state of California must be an attorney or counsel at law or the equivalent in a foreign country. *See 2004 California Rules of Court, Rule 988*. Thus, the position appears to be that of an attorney working as a foreign legal consultant, which would be considered a specialty occupation. Accordingly the petitioner has established that the proffered position is a specialty occupation.

However, the petitioner has not established that the beneficiary is qualified to perform the duties of a foreign legal consultant, in the state of California. The State Bar of California does recognize the ability of an attorney to provide legal advice in California limited to the law of the foreign country in which he or she is licensed to practice law. If this is the case in the instant petition, the petitioner would have to require that the beneficiary be registered as a foreign legal consultant. Such registration includes having proof of good moral character, and maintaining insurance as security for claims resulting from the attorney's acts, errors or omissions, among other items. *See* the rules and regulations for foreign legal consultants found through the search bar at the State Bar's website at http://www.calbar.ca.gov/state/calbar/calbar_home.jsp. However, the record is devoid of any information as to whether the beneficiary has the necessary registration required by the state of California Bar to perform the duties of a foreign legal consultant. Without further clarification of the beneficiary's registration, the record is not clear that the beneficiary is ready to immediately engage in employment in the occupation, as outlined in 8 C.F.R. 214.2(h)(4)(v)(A). For this reason, the petition may not be approved.

As related in the discussion above, while the petitioner established that the proffered position is a specialty occupation, the petitioner did not establish that the beneficiary is qualified to perform the duties of the position. Accordingly, the matter will be remanded to the director to address the issue of the requisite licensure for the proffered position. The director may request any additional evidence deemed necessary to assist him with the determination. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director shall enter a new decision.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision of the director is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.