



U.S. Citizenship
and Immigration
Services

D-2

JUL 1 2004

FILE: SRC 03 091 52795 Office: TEXAS SERVICE CENTER Date:

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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director approved the nonimmigrant visa petition and certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be withdrawn and the matter will be remanded to the director for further consideration.

The petitioner is a law firm that seeks to employ of the beneficiary as a law clerk. 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 determined that the position is a specialty occupation. On notice of certification, the petitioner did not submit any additional information. The record is complete.

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 director's request for additional evidence; (3) the petitioner's response to the director's request; and (4) the director's decision. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a law clerk. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's January 29, 2003 letter of support; and the petitioner's response to the director's request for evidence. According to the January 29, 2003 letter of support, the beneficiary would perform duties that entail, in part: conducting legal research in various areas of law and drafting memoranda of law based upon the research; preparing and finalizing legal documents needed in the various courses of proceeding; preparing service of process documents; drafting correspondence to clients; and filing pleadings. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The AAO agrees with the director that the proffered position is a specialty occupation.

The petition may not be approved at this time, however. The director did not address the issue of whether the beneficiary qualifies to perform the duties of a specialty occupation. The petitioner submitted an educational evaluation from Global Education Group, Inc., which indicates that the beneficiary's education is equivalent to a U.S. bachelor's degree in a major not offered in the United States. Upon review of the beneficiary's transcript, however, it appears that his program of studies covered a two-year period, and 13 courses. It is not at all clear how this could equate to a four-year bachelor's degree in the United States that would typically include 32 courses or more. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

In addition, all of the advertisements submitted by the petitioner to show that one must have a bachelor's degree for law clerk positions indicate that a candidate would need to be a law student to be qualified for the position. The educational requirement, therefore, would be a four-year degree, plus an additional one or two years of law school education.

Since the petitioner must establish that the beneficiary has the equivalent of a four-year degree plus at least one year of law school education, the matter will be remanded to the director for further consideration. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary has a degree or its equivalent in the specific specialty required by the specialty occupation, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's August 6, 2003 decision is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision.