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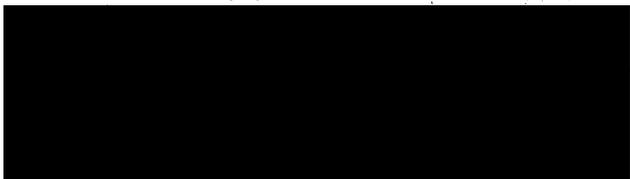
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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

D2



FILE: WAC 04 008 50857 Office: CALIFORNIA SERVICE CENTER Date: JAN 03 2005

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded.

The petitioner is a California legal corporation. In order to employ the beneficiary as a legal assistant on Philippine laws, 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).

Because he found that the petitioner was proffering a legal assistant or paralegal position that does not require at least a bachelor's degree or its equivalent in a specific specialty, the director denied the petition on the basis that the petitioner had failed to establish that it met the requirements of a specialty occupation.

Counsel contends that the petition should have been granted. Counsel contends that the record establishes that, although denominated legal assistant, the proffered position is more expansive, and involves legal consultant duties that require a Philippines baccalaureate in law.

Based upon its independent consideration of the entire record of proceeding, including the appellate brief, the AAO has determined that the petition must be denied and the appeal dismissed, although on a different basis than cited by the director. The AAO is therefore exercising its authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within the AAO's power to formulate.

The most comprehensive description of the duties proposed for the beneficiary occupies about three pages of in the petitioner's letter of reply to the RFE, and is too lengthy for reproduction here. The petitioner lists the duties in four sections, which can be fairly described as: (1) legal research and analysis; (2) preparation of legal documents; (3) investigation of facts and law; and (4) other tasks as may be assigned.

According to the RFE reply letter, the position's research and analysis function would address "law sources such as statutes, recorded judicial decisions, legal articles, treaties, constitutions, and legal codes" of the Philippines, the United States, and California.

Examples of the legal documents that the legal assistant would prepare include "briefs, pleadings, appeals, wills, contracts, initial and amended articles of incorporation, stock certificates and other securities, buy-sell agreements, closing papers and binders, deeds, and trust instruments for review, approval, and use of petitioner." The legal assistant would prepare: pleadings, briefs, and memoranda for Philippine court cases; deeds, wills, and contracts for Philippine American clients covering properties in the Philippines; pleadings for land disputes in the Philippines; pleadings for probate proceedings and subsequent partition of properties left in the Philippines by Filipino American decedents; documents such as Deeds of Absolute Sale of Real Property, Assignments of Rights on Real Property, Notarial Wills and Trust Agreements; Extrajudicial Partition of Properties for heirs of Filipino-Americans who died intestate leaving real properties in the Philippines; appraisals and inventories for estate planning; affidavits; real estate closing statements; articles of incorporation and by-laws for those interested in setting up corporations in the Philippines; incorporation

documents for the Philippines Securities and Exchange Commission; sole proprietorship documents for filing with the Philippines Department of Trade and Treasury; reviews of contracts, memoranda of agreement, assignments of rights, and trust agreements dealing with real property with situs in the Philippines and/or the United States; and other legal documents, including appeals, for filing in courts and quasi-judicial bodies.

The investigative function, which would encompass “facts and [the] law of the case to determine causes of action and to prepare case accordingly,” would include: data-gathering; evidence compilation; appraisals and inventories for estate planning in both California and the Philippines; preliminary interviews of Filipino American clients; determinations of appropriate causes of action based on the allegations of Filipino American clients; and assistance to the petitioner in the preparation of interrogatories and depositions.

The “other tasks that may be assigned” would include filing pleadings with the appropriate court clerks; subpoena delivery; possible appearance “before Philippine Regional Trial Courts, [the] Philippine Court of Appeals (possibly the Philippine Supreme Court) and the Central Bank of the Philippines on cases currently handled by petitioner before these tribunals”; possible handling of “civil, labor, tax and administrative cases in the Philippines,” which would include “litigation in Philippine courts of various jurisdictions, representation in Philippine government entities, and preparation of pleadings and other pertinent documents”; possible handling of “Philippine cases regarding land dispute, probate, and distribution of partition of properties”; possible handling of “tax, labor, and administrative cases for Filipino Americans investing and doing business in the Philippines”; and possibly acting as a legal librarian.

The petitioner’s letter of reply provides this comment on the legal assistant’s “level of responsibility”:

The position will serve as petitioner’s Philippine Department mainly responsible for servicing the needs of Filipino American clients on legal matters involving Philippine Law. As the need arises, the position will also involve duties of research, investigation and preparation of documents to assist petitioner in its work on other areas. It will be directly responsible to petitioner and its work will be subject to review by petitioner.

Counsel’s brief includes statements that the proffered position “calls for the preparation of documentation for Philippine courts and tribunals, and representing Filipino-American clients in cases in the Philippines” (at page 4); that “the position calls for representation of clients in Philippine courts and Philippine government agencies” (at page 16); and that membership in Philippines Bar is necessary because “[r]epresenting clients in court or before a federal agency requires admission to the Philippine Bar” (at page 5).

The director was incorrect in his characterization of the proffered position. As partly reflected in the above summation of the record’s descriptions of the proffered position, the petitioner has established that job performance requires membership in the Philippines Bar and the underlying law degree required for such membership. Therefore, the proffered position is a specialty occupation.

However, for reasons discussed below, the AAO finds that the petitioner has not established that the beneficiary is qualified to serve in the proffered position. Because the director failed to make a determination on this issue, the case will be remanded for the admission of further evidence and the entry of a new decision.

What raises the proffered position above a legal assistance non-specialty-occupation is the fact that its duties include representation of clients as an attorney before courts and administrative agencies in the Philippines. The record indicates that the beneficiary belonged to the Philippines bar and that, accordingly, the courts and administrative agencies of that country would allow her to represent clients before them. However, this does not settle the licensure question. The fact that the beneficiary would practice Philippines law as part of her employment raises the additional issue of whether she is properly authorized by the State of California to work in such a capacity in the State.

Section 214(i)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2)(A), states that an alien applying for classification as an H-1B nonimmigrant worker must possess "full state licensure to practice in the occupation, if such licensure is required to practice in the occupation." Pursuant to 8 C.F.R. § 214.2(h)(v)(A), if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation. The regulations at 8 C.F.R. §§ 214.2(h)(v)(B) and (C) address situations where the relevant jurisdiction allows temporary licensure or limited practice under the supervision of a properly licensed person.

Based upon the scope of the foreign legal representation duties described in the record that require foreign bar membership, and counsel's insistence that the petitioner will function as a consultant on foreign legal matters, it appears that the proffered position may be that of a Registered Foreign Legal Consultant (RFLC) as addressed by Rule 988 of the 2004 California Rules of Court. As presented on the Internet at www.courtinfo.ca.gov/rules/titlethree/title3-98.htm, this Rule states:

Rule 988. Registered foreign legal consultant

- (a) **[Definition]** A "Registered Foreign Legal Consultant" is a person who
- (1) is admitted to practice and is in good standing as an attorney or counselor at law or the equivalent in a foreign country; and
 - (2) has a currently effective Certificate of Registration as a Registered Foreign Legal Consultant from the State Bar.
- (b) **[State Bar Registered Foreign Legal Consultant program]** The State Bar shall establish and administer a program for registering foreign attorneys or counselors at law or the equivalent under rules adopted by the Board of Governors of the State Bar.
- (c) **[Eligibility for certification]** To be eligible to become a Registered Foreign Legal Consultant, an applicant must:
- (1) Present satisfactory proof that the applicant has been admitted to practice and has been in good standing as an attorney or counselor at law or the equivalent in a foreign country for at least four of the six years immediately preceding the application, and while so admitted, has actually practiced the law of that country;

- (2) Present satisfactory proof that the applicant possesses the good moral character requisite for a person to be licensed as a member of the State Bar of California;
- (3) Agree to comply with the provisions of the rules adopted by the Board of Governors of the State Bar relating to security for claims against a Foreign Legal Consultant by his or her clients;
- (4) Agree to comply with the provisions of the rules adopted by the Board of Governors of the State Bar relating to maintaining an address of record for State Bar purposes;
- (5) Agree to notify the State Bar of any change in his or her status in any jurisdiction where he or she is admitted to practice or of any discipline with respect to such admission;
- (6) Agree to be subject to the jurisdiction of the courts of this state with respect to the laws of the State of California governing the conduct of attorneys, to the same extent as a member of the State Bar of California;
- (7) Agree to become familiar with and comply with the standards of professional conduct required of members of the State Bar of California;
- (8) Agree to be subject to the disciplinary jurisdiction of the State Bar of California;
- (9) Agree to be subject to the rights and obligations with respect to attorney client privilege, work-product privilege, and other professional privileges, to the same extent as attorneys admitted to practice law in California; and
- (10) Agree to comply with the laws of the State of California, the Rules and Regulations of the State Bar of California, and these Rules.

(d) **[Authority to practice law]** Subject to all applicable rules, regulations, and statutes, a Registered Foreign Legal Consultant may render legal services in California, except that he or she may not:

- (1) Appear for a person other than himself or herself as attorney in any court, or before any magistrate or other judicial officer, in this state or prepare pleadings or any other papers or issue subpoenas in any action or proceeding brought in any court or before any judicial officer;
- (2) Prepare any deed, mortgage, assignment, discharge, lease, or any other instrument affecting title to real estate located in the United States;
- (3) Prepare any will or trust instrument affecting the disposition on death of any property located in the United States and owned by a resident or any instrument relating to the administration of a decedent's estate in the United States;
- (4) Prepare any instrument in respect of the marital relations, rights or duties of a resident of the United States, or the custody or care of the children of a resident; or
- (5) Otherwise render professional legal advice on the law of the State of California, any other state of the United States, the District of Columbia, the United States, or of any jurisdiction other than the jurisdiction(s) named in satisfying the requirements of subdivision (c) of this rule, whether rendered incident to preparation of legal instruments or otherwise.

(e) **[Failure to comply with program]** A Registered Foreign Legal Consultant who fails to comply with the requirements of the Registered Foreign Legal Consultant program of the State Bar shall have her or his certification suspended or revoked under rules adopted by the Board of Governors of the State Bar.

(f) **[Fee and penalty]** The State Bar shall have the authority to set and collect appropriate fees and penalties for this program.

(g) **[Inherent power of Supreme Court]** Nothing in these rules shall be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the practice of law in California.

Rule 988 adopted effective December 1, 1993.

Former Rule

Former rule 988, similar to the present rule, was adopted and amended by the Supreme Court effective April 2, 1987, and repealed effective December 1, 1993

As the record of proceeding contains no evidence that Rule 988 is not applicable¹ or that the beneficiary is properly registered as a foreign legal consultant, the beneficiary's ability to fully perform the proffered position has not been established. If the beneficiary is required to be certified as an RFLC and has not yet been issued a Certificate of Registration as an RFLC from the California State Bar, the proper remedy is to refile after obtaining the required certification.² CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether, in order to meet the licensure requirements of section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A), and the CIS regulations at 8 C.F.R. §§ 214.2(h)(v)(A) through (C) to fully perform the proposed duties as outlined in the record, the beneficiary must be certified by the California State Bar as an RFLC, 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.

¹ The best example of authoritative evidence on the issue would be a letter from the appropriate officer of the State Bar that officially and conclusively opines on the complete body of information that that the petitioner has presented to Citizenship and Immigration Services (CIS) about the duties of the proffered position. The letter should contain an official determination of whether registration as an RFLC is required on the basis of all the facts presented to CIS.

² CIS regulations require that the petitioner file an amended or new petition, with fee and a new labor condition application, to reflect any material changes in employment or the alien's eligibility as specified in the original petition. 8 C.F.R. § 214.2(h)(2)(i)(E).

ORDER: The director's December 12, 2003 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.