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U.S. Citizenship
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Services

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DA

FILE: EAC 04 800 26205 Office: VERMONT SERVICE CENTER Date: **AUG 29 2006**

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, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the Vermont Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a Philadelphia, PA law firm with 17 employees and a gross annual income of \$1.5 million. It seeks to employ the beneficiary as a full-time legal writer/editor 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 based on his determination that the proffered position was not a specialty occupation, and because the petitioner failed to submit a certified labor condition application (LCA).

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's denial letter; and (3) Form I-290B, with the petitioner's brief and new evidence.

The first issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

In order to determine whether a position is a specialty occupation, CIS must examine the ultimate employment of the alien. CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. 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 nor 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.

The petitioner states that it is seeking the beneficiary’s services as a legal writer/editor. Evidence of the beneficiary’s duties includes: the Form I-129 and supporting documentation, and the petitioner’s response to the RFE. According to this evidence, the beneficiary will perform and devote the approximate percentage of time to the following duties:

- Analyze documents in the English and the Russian languages, develop, write and edit written matters in the English language based on information obtained intended for reports, briefs, proposals, instructions, administrative texts, presentations, etc. – 25%;
- Gather information about the assigned topics in the English and the Russian languages, through personal observation, library and Internet research, and interviews with the firms’ clients to develop, write and edit written matters in the English language based on information obtained – 15%;
- Examine proposals and select material to be used, evaluate manuscripts, perform research, using appropriate sources and citations, use the written word to express ideas and convey information as well as meet established standards – 15%;
- Review documentation style, composition, grammar, word choices, suggest revisions to clients’ statements, briefs, instructions, and other documents, such as changing words and rearranging

sentences to improve clarity and accuracy, make redline corrections to documents, and proof work to ensure the desired output – 10%;

- Assist US based attorneys in preparing memorandums, reports, and other documents for submission to the Russian and international entities – 10%;
- Conduct research to verify facts, dates, and statistics, prepare written interpretations of complex technical data in the Russian and in the English languages; check copies for factual, numerical, logo, legal, style, spelling, punctuation and grammatical accuracy, breaks, and make corrections where needed – 15%; and
- Apply analysis, writing and research to support the manuscripts provided by primary sources to ensure accuracy of legal content before submission to courts, DHS offices, etc. – 10%.

The petitioner states that it requires a minimum of a bachelor's degree or its equivalent to perform the duties of the proffered position. The petitioner seeks to employ the beneficiary who has a degree in English and is fluent in Russian.

To determine whether the duties described at the time of filing are those of a specialty occupation, the AAO first considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)& (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO turns first to a consideration of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO finds that the duties of the position are similar to those of writers, editors, and translators.

The AAO finds that the petitioner has established the complexity of the position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) which requires that a petitioner establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

The record reflects that the petitioner is a law firm involved in aspects of international law. The record supports the petitioner's statements about the complexity of its international law practice. Therefore, AAO finds that the duties of the legal writer/editor position are specialized and complex and require a bachelor's degree in a specific field.

Therefore, the petitioner has established that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO also finds that the record contains sufficient documentation to establish that the beneficiary qualifies to perform services in a specialty occupation, as required at section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), 8 C.F.R. § 214.2(h)(4)(iii)(C).

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner has established that the beneficiary is qualified to perform the duties of the proffered position. The record indicates that the beneficiary holds a foreign degree in English. The petitioner provided an academic equivalency evaluation that concluded that the beneficiary attained the equivalent of a bachelor's degree in English from an accredited institution of higher education in the United States. Upon review of the record, there is sufficient evidence to determine that the beneficiary is qualified to perform the services of a specialty occupation. For the reasons related in the preceding discussion, the petitioner has established that the proffered position meets the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and that the beneficiary is qualified to perform the duties of the specialty occupation.

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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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.