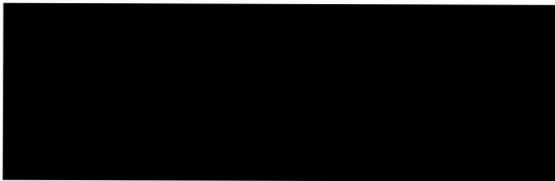




U.S. Citizenship
and Immigration
Services

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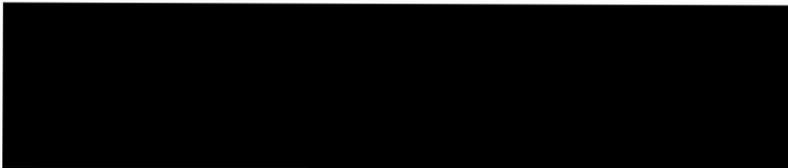
FILE: SRC 04 197 51186 Office: TEXAS SERVICE CENTER Date: APR 12 2006

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 denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a finance company that services an affiliated corporation, the Rody Truck Center. It seeks to employ the beneficiary as a legal consultant. 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 denied the petition because the beneficiary was not licensed to practice law in the State of Florida. On appeal, counsel states that the proffered position is a specialty occupation, but not that of an attorney requiring a license to practice law.

The director did not address whether the proposed position qualifies as a specialty occupation but found the beneficiary unqualified because she is not licensed to practice law in Florida. The director thus implicitly found that the position is for an attorney, and qualifies as a specialty occupation. The AAO agrees.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 are 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) the Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a legal consultant. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Be in charge of the petitioner’s legal department and serve as liaison with outside counsel employed by the petitioner;
- Review agreements and proposed agreements with Latin American customers;
- Analyze foreign contracts;
- Confer with company executives and office personnel to detect inaccurate statements or information, omissions of essential terms, and conflicts with possible legal prohibitions;
- Recommend modifications and prepare amendments, assisting attorneys and legal staff in interpreting foreign contracts as they interface with United States transactions;
- Review all legal paperwork;
- Gather evidence and review cases to determine which cases to forward to outside counsel for collection and possible litigation;
- Make recommendations to management regarding approval or rejection of settlements and mediation and the advisability of prosecuting or defending lawsuits;

- Review repossession, bankruptcy, and collections regulations to ensure that the company is operating within the law;
- Conduct research in international law; and
- Interpret foreign legal documents and communicate with Spanish customers and businesses in the Dominican Republic and Latin America discussing legal terminology.

Previous counsel for the petitioner states in her correspondence of September 20, 2004, that the beneficiary would be fully discharging the duties normally discharged by an attorney and working exclusively for the petitioning corporation within parameters established by the Florida Bar.

The petitioner requires a minimum of a bachelor's degree in law for entry into the proffered position.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. Counsel states, on appeal, that the beneficiary would not work as an attorney for the petitioner, but as a legal consultant who would liaise with independent counsel employed by the petitioner. The AAO does not agree. The beneficiary would: analyze foreign contracts; recommend modifications and prepare amendments to contracts and legal documents; assist in the interpretation of foreign contracts; confer with company executives to detect omission of essential contract terms and conflicts with legal prohibitions; make recommendations to management regarding approval or rejection of settlements and mediation and the advisability of prosecuting or defending lawsuits. As previously noted and stated by former counsel, the beneficiary would fully perform duties normally performed by an attorney, but work exclusively for the petitioner and not perform those services for the general public. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for attorneys, and in this instance, an attorney working as in-house counsel exclusively for the petitioner advising it on legal issues related to its business activities. The *Handbook* notes that to practice law in the courts of any state or other jurisdiction, a person must be licensed, or admitted to the bar under rules established by the jurisdiction's highest court. All states require that applicants for admission to the bar pass a written bar examination. To qualify for the bar examination in most states, an applicant usually must earn a college degree and graduate from a law school accredited by the American Bar Association or proper state authorities. As in the state of Florida, however, some jurisdictions permit attorneys licensed in other jurisdictions to work as attorneys while exclusively employed by a business organization without taking that state's bar examination. The offered position does, therefore, qualify as a specialty occupation as it satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The final issue to be considered is whether the beneficiary qualifies to perform the duties of a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or

- (C) (i) experience in the specialty equivalent to the completion of such degree, and
- (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (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.

Former counsel stated that the beneficiary is exempt from licensure as she will be working as in-house counsel. F.S.A. Bar Rule 17-1.1 provides that attorneys licensed to practice in jurisdictions other than Florida may undertake legal activities in Florida while exclusively employed by a business organization. The director found that the beneficiary was not licensed in any jurisdiction, including in her home country, and did not qualify for the exemption. The AAO agrees. The record does not establish that the beneficiary is a licensed attorney. Thus, she would not be allowed under F.S.A. Bar Rule 17-1.1 to provide services as in-house counsel for the petitioner.

The petitioner's present counsel states that the beneficiary is not being hired as an attorney as defined by Florida law, and that the duties to be performed by the beneficiary do not amount to "the practice of law" since the beneficiary is working only for the petitioner and performing services in-house. The duties to be performed are duties performed by attorneys even though they apparently will not be performed for the general public. The director asked that the petitioner provide evidence of the beneficiary's Florida law license. The petitioner has not done so, nor has the petitioner provided evidence from the Florida Bar Association indicating that the beneficiary need not be licensed in this instance. The petitioner has not established that the beneficiary is qualified to perform the duties of the offered specialty occupation. The director's decision denying the present petition will not be disturbed.

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 appeal is dismissed. The petition is denied.