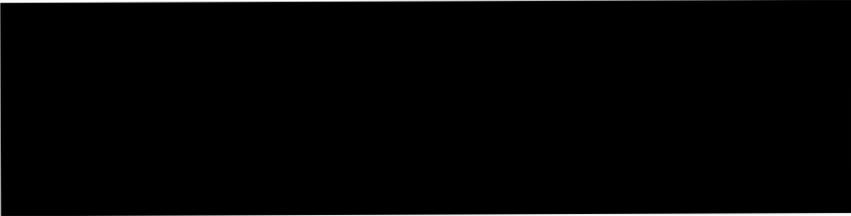


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FILE: SRC 04 229 53221 Office: TEXAS SERVICE CENTER Date: **JUL 12 2006**

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*  
Robert P. Wiemann, Chief  
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 appeal will be sustained. The petition will be approved.

The petitioner is a consulting and investment company that seeks to employ the beneficiary as a foreign law advisor. 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, finding that the petitioner did not comply with the labor condition application's (LCA) requirement to take good faith steps to recruit for the offered position before filing the LCA. The director thereby concluded that the petitioner did not comply with section 212(n)(1)(G) of the Act.

On appeal, counsel states that the petitioner complied with the LCA's attestation requirements.

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)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,
3. Evidence that the alien qualifies to perform services in the specialty occupation.

The director inappropriately denied the petition because the petitioner failed to comply with the provision of section 212(n)(1)(G) of the Act requiring H-1B dependent employers to take good faith steps to recruit U.S. workers. The petitioner is not an H-1B dependent employer under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), as it only employs one worker. Further the provision cited by the director sunset on October 1, 2003, prior to the date the petition was filed.<sup>1</sup> Thus, the law was not in

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<sup>1</sup> Section 422 of the H-1B Visa Reform Act of 2004 permanently reinstated the requirement that employers determine whether they are "H-1B dependent" before filing a labor condition application (LCA) as well as the attestation requirement for recruitment and hiring and displacement and secondary displacement for such employers (effective March 8, 2005).

effect at the time the petition was filed or at the time the director made his decision. The director's decision is withdrawn.

The AAO will now determine whether the offered position qualifies as a specialty occupation.

The petitioner is seeking the beneficiary's services as a foreign law advisor. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail providing advice to the petitioner and its clients on foreign antitrust and commercial law. The beneficiary will analyze anticipated transactions of the petitioner and its clients to determine foreign law compliance issues and trade regulations; provide recommendations and advice; and implement actions that have been agreed upon by managing foreign legal matters in foreign courts or with foreign regulatory agencies. The beneficiary will advise on foreign laws.

Based on the submitted job description and the evidence of record, the offered position qualifies as a specialty occupation under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The position offered here would require a baccalaureate degree in a discipline relating to international law.

Now, the AAO will consider the beneficiary's qualifications for the proposed position.

The petitioner seeks to employ the beneficiary who holds the educational equivalent of a master of law degree and a Ph.D. in competition law. The August 24, 2004 educational evaluation from the [REDACTED] states that the beneficiary holds the equivalent of the U.S. degree of "Doctor of Philosophy awarded by a regionally accredited university in the United States." The September 15, 2004 evaluation from [REDACTED] conveys that the beneficiary holds a "Doctorate in Laws in Dutch Law, which in almost every jurisdiction in the world is the highest educational credential possible." Based on the submitted educational evaluation, the beneficiary qualifies for the proposed position based on his educational degrees.

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