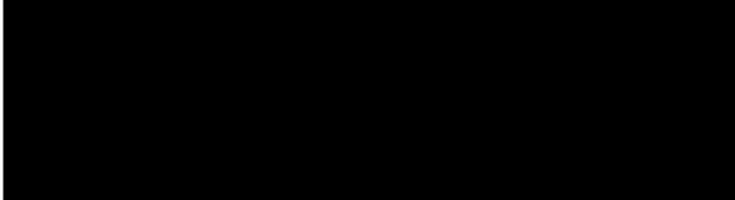


**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**

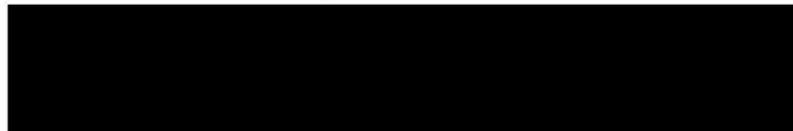
**PUBLIC COPY**



*D2*

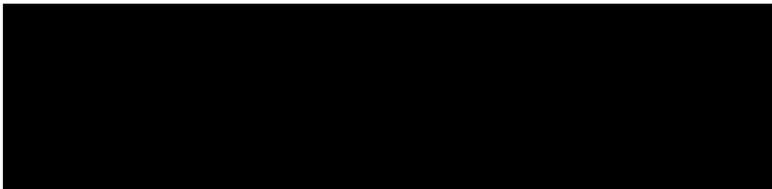
FILE: WAC 04 057 50090 Office: CALIFORNIA SERVICE CENTER Date: **JUN 19 2006**

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.

A handwritten signature in blue ink, appearing to read "Robert P. Wiemann".

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

The petitioner is a law firm that seeks to employ the beneficiary as a foreign legal specialist. 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a foreign legal specialist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's December 18, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: analyzing and interpreting complex tax law-related issues, primarily related to the Asian market; examining various issues that primarily pertain to tax-related issues regarding cross-border and international mergers and acquisitions, securities transactions, and licensing arrangements; performing research for the petitioner's Asian practice group and tax department, primarily regarding tax issues in connection with the purchase of corporations, takeover transactions, and corporate reorganizations; reviewing and analyzing legal documents pertaining to Asian and other transactions; drafting complex legal memoranda; and coordinating the resolution of pending deal issues with clients. The petitioner indicated that a qualified candidate for the job would possess an advanced degree in law.

The director found that the proffered position was not a specialty occupation because it was most like a paralegal or legal assistant position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director erred in disregarding an expert opinion letter previously submitted, which stated an individual could not perform the duties of the proffered position without an advanced degree in law. Counsel also states that the duties of the proffered position are so specialized and complex that they could not be performed by someone without an advanced degree in law. Counsel asserts that the duties of the position far exceed the responsibilities normally handled by paralegals. Counsel states that paralegals do not analyze or interpret legal issues, as the beneficiary would be doing.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* 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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. There is no entry in the *Handbook* for foreign legal specialists, and the AAO concurs with counsel that the duties of the proffered position exceed those listed for paralegals and legal assistants.

Regarding parallel positions, the petitioner submitted a letter from the Dean of Emory University School of Law. He stated that the equivalent of a law degree would be needed to perform the duties of the proffered position. He also stated that the proffered position is “essentially like a first-year associate assignment, which draws on the individual’s knowledge of foreign laws to enhance his/her ability to assist attorneys in researching legal issues and preparing briefs.” He further asserted that the position “absolutely requires a law degree, but as [the beneficiary] will not be engaged in the practice of law, the assignment does not require licensure or bar admission.”

The petitioner also compared the proffered position to that of a first-year associate. The petitioner stated that the duties of the proffered position require a level of analysis and sophistication beyond that normally provided by paralegals and legal assistants, and are similar to those performed by new associates. The petitioner stated that it typically employs first-year associates after they graduate from law school but prior to their admission to the bar, and provided documentation to support this statement. The AAO finds that the position is similar to a law clerk for which a law degree, but not licensure, is required.

The petitioner has, thus, established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2).

The beneficiary has the equivalent of a bachelor’s degree in legal studies and a master of laws degree from a United States college or university, as determined by the Trustforte Foundation, an educational credentials evaluation company. The beneficiary is, therefore, qualified to perform the specialty occupation.

For the reasons previously discussed, the petitioner has established both that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the petitioner’s appeal is sustained.

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.