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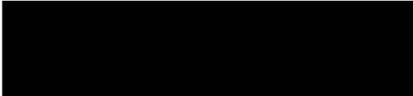
**U.S. Citizenship  
and Immigration  
Services**

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FILE: SRC 05 002 54350 Office: TEXAS SERVICE CENTER Date: **MAY 08 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.

*for Michael T. Kelly*  
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 corporate and trust management services company that seeks to employ the beneficiary as a foreign 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 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 consultant. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 21, 2004 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: providing legal advice and support with regard to information and regulations pertaining to services for clients in foreign investments, corporate and trust management, and corporate, asset and project finance structuring; researching and providing information to clients regarding legal and corporate matters; identifying the laws of the different legal jurisdictions where the petitioner works; providing legal articles and other materials that pertain to the needs of the petitioner's foreign clients; drafting contracts, legal and financial agreements, and trust instruments; conducting research in response to the petitioner's clients' needs, in the areas of corporate and trust management services, corporate asset and project finance structuring; reviewing current market and financial information and evaluating foreign regulations which affect investments, corporate and trust management and asset structuring; and liaising with clients to keep them informed of current and/or new regulations in international and commercial law, international trading, and tax law. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in legal studies.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 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 State of Florida's Bar Association recognizes the position of foreign legal consultant as a professional position. Counsel states that the director erred in determining that an individual with an associate's degree could perform the duties of the proffered position. Counsel asserts that the duties require complex analytical, research and evaluative skills. Counsel further states that CIS has previously approved H-1B petitions for foreign legal consultants. Counsel claims that the director misinterpreted the Department of Labor's *Dictionary of Occupational Titles (DOT)* SVP for the proffered position.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): 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. As counsel notes, there is no entry in the *DOT* or the *Handbook* for foreign legal consultants, but counsel refers to the entries for paralegals, and the AAO concurs that the duties of the proffered position parallel the responsibilities of the job description. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, in a specific specialty is required for this position. The *Handbook* clearly states that one can become a paralegal through training obtained at the associate's or bachelor's degree level, certificate programs, on-the-job training, or a college degree with no specific legal training.

Counsel asserts, in part, that the director misinterpreted the *DOT's* SVP rating. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

Regarding parallel positions, the petitioner submitted two letters from law firms (including counsel's) as well as an Internet listing from another law firm describing the background of that firm's paralegals. One of the letters states that it only hires foreign legal consultants with bachelor's degrees in legal studies. Counsel's letter stated that two of its paralegals have law degrees from their home countries, and that the third has the equivalent of a bachelor's degree in business administration. The Internet listing indicates that of the firm's 11 paralegals, five have bachelor's degrees in business administration, political science or psychology; one has a bachelor's degree in sociology and a paralegal certificate; three only have paralegal certificates; and the information was not clear for the remaining two paralegals. This evidence clearly indicates that a bachelor's degree in a specific specialty is not an industry standard.

The record includes evidence from the Florida Bar Association describing the position of a foreign legal consultant. This evidence states that the purpose of the rule is to permit a person who is admitted to practice law in a foreign country the ability to act as a foreign legal consultant in the State of Florida. The rule does not explicitly state that such an individual is required to have a bachelor's degree in a specific specialty. More relevant is that a foreign legal consultant is only authorized to act as a legal consultant "regarding the laws of the country in which the attorney is admitted to practice." The duties of the proffered position are much broader than rendering services related to the laws of the beneficiary's home country, and, therefore, are not equivalent to the duties of a foreign legal consultant. The requirements of the Florida Bar Association for certification as a legal consultant are, therefore, not probative of the proffered position as a specialty occupation. The record does not include any documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. This is a newly created position, and the petitioner is not able to meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The evidence of record does not distinguish the paralegal's job duties to establish that a four-year degree in a related specialty is required. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Counsel notes that CIS approved other petitions that had been previously filed on behalf of foreign legal consultants. The director's decision does not indicate whether she reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO notes that the Chapter 16 of the Rules Regulating the Florida Bar indicate that a foreign legal consultant must have been engaged in the practice of law in the foreign country where he or she is admitted to practice law for a period of not less than 5 of the 7 years immediately preceding the application for certification as a foreign legal consultant. The beneficiary would not have been eligible for certification as a legal consultant at the time the instant petition was filed. In addition, Chapter 16 prohibits practice as a foreign legal consultant unless and until certification as a foreign legal consultant is obtained, and therefore, the beneficiary would not have been eligible to perform the duties of the occupation. For these additional reasons, the petition may not be approved.