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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: EAC 05 030 50337 Office: VERMONT SERVICE CENTER Date: OCT 2 5 2006

IN RE: Petitioner: [redacted]
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:

[redacted]

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, 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 law firm that seeks to employ the beneficiary as an intellectual property paralegal. 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 on the ground that the proffered position is not a specialty occupation. Counsel submitted a timely appeal.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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) 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 and counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an intellectual property paralegal. 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 allocate the specified percentage of time to perform duties as follows:

- assist the attorneys by conducting research about clients' products and their international and country-specific marketability and protection against copyright violations (10-15 percent)
- conduct international research relevant to the petitioner's work: economics, governmental organizations, politics, demographics, and international relations (5-10 percent)
- act as a liaison to a foreign client who is represented by the petitioner pursuant to 37 C.F.R. §10.1, et seq. (10-20 percent)
- conduct country studies and market research as an inexpensive but crucial service for international clients who are interested in filing a patent and trademark application in the United States and in other countries, and for U.S. clients who are interested in filing in one or more countries in addition to the United States (5-10 percent)
- determine the schedule, amount, place of payment, and mode of payment of each maintenance fee within each foreign country (1-5 percent)
- research a prospective market in the field of a new invention covered by the client's patent as well as the economy, government industrial and trade policies within specific markets in order to help clients understand the country's system and particular markets and the competitor's information (5-10 percent)
- develop and maintain information on the database and update it when necessary (5 percent)
- analyze and estimate the costs and benefits for clients within each market and help the client make a decision before the client proceeds with a new case in any of the different countries within the allocated budget (5-12 percent)
- conduct research about the availability of product distributors for U.S. products in foreign countries and whether a product of U.S. origin must be modified (e.g. to accept the outlet electrical voltage of the foreign market) in order to accommodate the foreign market's need for price, design, and cost effectiveness due to different needs and trends (1-5 percent)
- conduct research on complex procedures and constantly changing regulations for filing international applications under 35 U.S.C. § 351, et. seq., the Patent Cooperation Treaty (PCT) by communicating with World Intellectual Property Organization (WIPO) in order to provide U.S. and international clients with pertinent information (1-12 percent)
- ascertain government trade policies and issues in U.S. government and foreign countries through governmental documents, designing and preparing a corresponding report (1-12 percent)
- utilize knowledge and capacities in handling broad database and analytical skills established by academic research experiences in conducting self-directed research on patents and patentability search (15-20 percent)

- prepare reports pursuant to 37 C.F.R. §§ 1.56, 1.97, and 1.98 based on the results of the research based on foreign language patents and scientific and technical publications which use the required Information Disclosure Statement in order to show the patent examiners that the results of the patent searches are previous inventions; how the client's inventions are different from these previous inventions; and that the client's invention is new and has not been earlier published anywhere (5-10 percent)
- use foreign language skills, especially in the languages of countries with a high output of invention such as Japan, acquired through a university-level program (10-20 percent)

The petitioner's letter stated that the proposed position requires a bachelor's degree in political science, international relations, or a closely related field in social science with a strong international component.

In denying the petition, the director stated that the beneficiary's degree in Asian studies does not appear relevant to the legal field. The director found that "the petitioner has implied that a broad range of degrees in social sciences have been considered sufficient for employment consideration, which is not consistent with the definition of a specialty occupation." The director stated that the proposed position does not qualify as a specialty occupation since a variety of degrees such as Asian studies qualify a person for the position. The director stated that the 2004-2005 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) reports that a paralegal does not require a specific baccalaureate degree. According to the director, the submitted social science degrees relating to the paralegals employed by the petitioner demonstrate that any bachelor's degree is sufficient for the proposed position in that the petitioner's paralegal staff have degrees in sociology, English, and Asian studies. The director concluded that the petitioner failed to establish any of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that ninety percent of the petitioner's clients are international investors, and that the petitioner is a liaison between its clients and worldwide government patent offices and between its U.S. clients and foreign attorneys. Counsel states that the petitioner's practice involves matters under the jurisdiction of the U.S. Patent and Trademark Office that relate to intellectual property. Counsel further states that the beneficiary will communicate directly with clients in order to obtain the information needed to initiate and conduct the appropriate research on international product marketability and patent/copyright protection issues, and thereafter communicate the results to attorneys and clients. According to counsel, a growing portion of the technology that is involved in the research efforts of the petitioner's foreign clients is no longer performed in the United States or available from sources within the United States. Counsel states that the paralegal must locate, identify, and retrieve foreign technology, and assemble items of that technology from multiple sources on behalf of its clients. Counsel states that a degree in Asian studies is not the minimum requirement for the proposed position. Counsel contends that all of the petitioner's paralegals hold a minimum of a bachelor's degree in the social sciences with a strong international focus, accompanied by solid research skills equivalent to those gained through a baccalaureate-level program in social science. The job duties are complex, counsel asserts, as the beneficiary must conduct complex market research and research patent and copyright protection issues on an international basis for the petitioner's foreign representatives of corporate clients. Counsel states that many of the petitioner's international clients are interested in filing patent and trademark applications in the United States, Asia, and Europe. The beneficiary must have the

specialty knowledge of political science and international relations in order to function in an environment where the foreign government, usually in Asian countries, does not reliably enforce patents that have been granted by their government to U.S. citizens, counsel states. According to counsel, the foreign government could demand that the U.S. citizen grant compulsory licenses to patents granted by the U.S. government, unless the U.S. citizen has "worked" the patent within the foreign country, and if the U.S. citizen refuses, the foreign government could refuse repatriation of any profits made within its country.

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.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree. In the context of the petitioner's business, the beneficiary's job duties are specialized and complex, requiring knowledge usually associated with the attainment of a baccalaureate or higher degree in a specific academic discipline that is relevant to the proposed duties. Accordingly, the petitioner establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

The evidence of record contains the beneficiary's academic transcript and master's degree in Asian studies from George Washington University, and her academic transcript and bachelor's degree in liberal arts with a major in international studies from the University of South Carolina. Based on this evidence, the beneficiary is qualified to perform the duties of the proposed position.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

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.