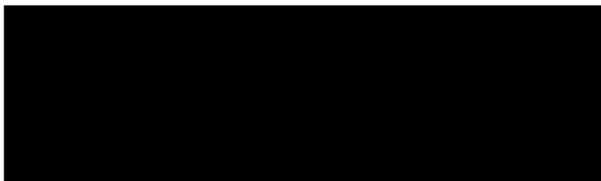


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U.S. Citizenship  
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*D2*

FILE: WAC 04 257 51956 Office: CALIFORNIA SERVICE CENTER Date: **SEP 20 2007**

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:

SELF-REPRESENTED

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 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 law firm that seeks to employ the beneficiary as a foreign legal consultant.<sup>1</sup> 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation, received on September 20, 2004; (2) the director's first request for additional evidence, dated February 15, 2005; (3) the petitioner's response to the director's request; (4) the director's second request for evidence, dated October 14, 2005; (6) the petitioner's response to the director's second request; (7) the director's denial letter, dated May 15, 2006; and (8) the Form I-290B, filed on June 14, 2006, and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on two grounds: (1) that a material change to the duties of the proposed position after the date of filing will not be considered, and (2) that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation.

According to the petitioner's letter of support, dated July 30, 2004, the duties of the proposed position are described as the following:

- (i) Legal research and subsequently advise the attorneys on Transactional Aspects of Israeli Laws with emphasis on the following – Choice of Law (with respect to Palestine and Israel), Conflict of Laws (with respect to Palestine and Israel), Palestinian and Israeli Corporate and Business Laws, Palestinian and Israeli Security Laws (especially the issues concerning Security and Asylum cases), Israeli Tax Laws, Israeli Labor Laws, Israeli Arbitration Laws, Israeli Intellectual Property Laws and other associated Transactional Law issues. This research and the subsequent advice formulated based on this research is done so as to enable compliance with L-1 and EB-1 Multinational executive and manager non-immigrant and immigrant visa petition requirements. Also, this work will be done to assist prospective American Corporate clients in the software business in the United States interested in conducting business in Palestinian Territories and Israel for offshore software development (which often require compliance with Israeli intellectual property and Software export laws) and other business related matters (like arbitration agreements, and compliance with Palestinian and Israeli Labor and securities laws with respect to subsidiaries of American companies doing business in Palestine and Israel). Will assist Attorney Citizens wishing to

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<sup>1</sup> The AAO notes that although the petitioner indicated on the Form I-129 that the proffered position is immigration paralegal, all other documentation in the record describes the proposed position as a foreign legal consultant.

conduct business in Palestinian Territories and Israel. Seventy (70) percent of a 40-hour workweek.

- (ii) Research and advise attorneys on legal issues arising with respect to the Israeli and Palestinian Family Law (relating to Marriage, Divorce and Adoptions), develop Legal position and legal theories related to Israeli laws as they impact family sponsored immigrant petitions in the United States like I-130 petitions, Adoptions such as church approved adoptions, and Orphan petitions. Research will specifically relate to Palestinian and Israeli Customary law and civil marriages, Palestinian and Israeli adoption and legal issues related to orphans that may be brought into question by U.S. immigration authorities. This research will specifically assist attorney in filing briefs to the BIA where such I-130 petitions are denied, ten (10) percent of a 40-hour workweek.
- (iii) Research and keep track of amendments and changes in the Israeli Business Law and other regulations and analyzing the implications as and when these occur, fifteen (15) percent of a 40-hour workweek.
- (iv) Examine and ensure that all the associated paperwork included with Immigration and Non-Immigration visa petitions (affidavits, Birth certificates, Marriage certificates, and other documents) are in compliance with the pertinent regulations and statutes in Israel and Palestine, five (5) percent of a 40-hour workweek.

The director determined that the petitioner had submitted insufficient evidence to process the petition. On February 15, 2005, the director requested that the petitioner submit additional information of the proposed job duties. In the petitioner's response, dated May 7, 2005, it reasserted several of the job duties described with the initial filing. The petitioner asserted that the beneficiary will be responsible for "advising as well as rendering a legal opinion on different areas of the laws in Israel"; "represent her findings to both the principal attorney in the firm and to the prospective client"; and, "involved in the meeting in order to answer any and all questions as well as to render a legal opinion, based on her research and analysis." The petitioner asserted that the beneficiary will be the "sole individual to render such an opinion on the questions that arise or the issues that may arise." The petitioner further stated that the proposed position "cannot be done by someone other than an attorney, who had practiced law in the above areas for the simple fact that she has to render a legal opinion." The petitioner contends that a "non-attorney cannot render a legal opinion on which another person can rely on and pursue with the goals and plans that client has," and thus the position requires a person with a baccalaureate degree in law or the equivalent.

On October 14, 2005, the director requested that the petitioner submit evidence to establish that the beneficiary is qualified to perform duties in the claimed specialty occupation and evidence to establish whether the beneficiary is required to register as a foreign legal consultant under the California Rule of Court, Rule 988. Specifically, the director requested: (1) a copy of the beneficiary's permanent registration with the State Bar of California; or (2) a temporary or interim permit or other authorization

issued by the agency that authorized the beneficiary to practice the profession; or (3) if the petitioner contends that the beneficiary is exempt from the usual registration requirements, a letter from the appropriate state licensing agency attesting to the beneficiary's exemption.

In its response letter dated January 3, 2006, the petitioner asserted that the beneficiary does not fall under the California Rule of Court, Rule 988 since she will not provide any legal advice to clients and thus, she will not be required to register as a foreign legal consultant. The petitioner asserted that the beneficiary will only advise the attorney and will "not provide any legal advice to any client; the only contact with the clients will be to secure information only." The petitioner also submitted three expert opinions that will be further discussed below.

On May 15, 2006, the director denied the petition asserting that the petitioner may not materially change and amend the duties of the proposed position after the petition has been filed. The director noted that the petitioner amended the duties of the proffered position when responding to the second request for evidence. The director stated that the amended position description would not be considered in the instant petition since the petitioner must file a new petition if it wished to amend the duties of the proposed position. The director further stated that the petitioner did not submit sufficient evidence to establish that the beneficiary possesses the appropriate licensure required to perform the proposed duties.

On appeal, the petitioner contends that since it submitted an amendment to the petition while it was still pending, the amended job duties should have been accepted. Counsel cites to Section 214.2(h)(2)(i)(E) of the Act and states that this section "emphasizes and stresses the right of a petitioner to amend his petition and cause material changes to the originally filed petition." Counsel further contends that the "Service should request submission of a new fee for the amendment as required by the above section rather than denying the petition." The petitioner further states that if the director accepted the amended job description, the beneficiary would not be required to register as a foreign legal consultant or obtain an exemption pursuant to Rule 988. In addition, the petitioner states that since the beneficiary will provide legal information to the attorney and not the clients, she will not be practicing law and is not governed by Rule 988.

Upon review of the record, the AAO agrees with the director that the petitioner materially altered the job description in its January 3, 2006 response to the second request for evidence. While the initial job description focused on the fact that the beneficiary will provide legal advice to clients, the new job description asserted that the beneficiary will not provide legal advice to the client but only to the attorney. For example, under the revised job description, the beneficiary would "not provide any legal advice to any client; the only contact with the clients will be to secure information only." The AAO finds that these changes were not mere clarification but rather constituted a material alteration of the petition as originally filed. On appeal, the petitioner asserted that the job description filed in response to the second request for evidence was in fact an amendment to the petition and reflected a material change in the terms and conditions of the employment.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title

or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed is a specialty occupation. *See Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial petition, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather changed the duties indicated in the initial job description. Therefore, the analysis of the beneficiary's qualifications to perform the services of the occupation will be based on the job description submitted with the initial petition.

The second issue to be addressed on appeal is whether the beneficiary qualifies to perform the duties of the occupation. As discussed further below, the AAO finds that the beneficiary will be providing legal services to the petitioner's clients and is thus required to be licensed or certified. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), in order to qualify to perform services in a specialty occupation, an 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.

Pursuant to 8 C.F.R. § 214.2(h)(v)(A), if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

According to an evaluation contained in the record of proceeding, the beneficiary possesses the equivalent of a juris doctor degree from a regionally accredited college or university in the United States. She therefore is minimally qualified to perform the duties of the occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). However, the petitioner must still demonstrate that the beneficiary has followed the regulations pursuant to California Rule of Court, Rule 988 as outlined in the rule below.

Rule 988. Registered foreign legal consultant

(a) [Definition] A "Registered Foreign Legal Consultant" is a person who

(1) is admitted to practice and is in good standing as an attorney or counselor at law or the equivalent in a foreign country; and

(2) has a currently effective Certificate of Registration as a Registered Foreign Legal Consultant from the State Bar.

(b) [State Bar Registered Foreign Legal Consultant program] The State Bar shall establish and administer a program for registering foreign attorneys or counselors at law or the equivalent under rules adopted by the Board of Governors of the State Bar.

(c) [Eligibility for certification] To be eligible to become a Registered Foreign Legal Consultant, an applicant must:

(1) Present satisfactory proof that the applicant has been admitted to practice and has been in good standing as an attorney or counselor at law or the equivalent in a foreign country for at least four of the six years immediately preceding the application, and while so admitted, has actually practiced the law of that country;

(2) Present satisfactory proof that the applicant possesses the good moral character requisite for a person to be licensed as a member of the State Bar of California;

(3) Agree to comply with the provisions of the rules adopted by the Board of Governors of the State Bar relating to security for claims against a Foreign Legal Consultant by his or her clients;

(4) Agree to comply with the provisions of the rules adopted by the Board of Governors of the State Bar relating to maintaining an address of record for State Bar purposes;

(5) Agree to notify the State Bar of any change in his or her status in any jurisdiction where he or she is admitted to practice or of any discipline with respect to such admission;

(6) Agree to be subject to the jurisdiction of the courts of this state with respect to the laws of the State of California governing the conduct of attorneys, to the same extent as a member of the State Bar of California;

(7) Agree to become familiar with and comply with the standards of professional conduct required of members of the State Bar of California;

(8) Agree to be subject to the disciplinary jurisdiction of the State Bar of California;

(9) Agree to be subject to the rights and obligations with respect to attorney client privilege, work-product privilege, and other professional privileges, to the same extent as attorneys admitted to practice law in California; and

(10) Agree to comply with the laws of the State of California, the Rules and Regulations of the State Bar of California, and these Rules.

(d) [Authority to practice law] Subject to all applicable rules, regulations, and statutes, a Registered Foreign Legal Consultant may render legal services in California, except that he or she may not...

As noted above, in his October 14, 2005 request for additional evidence, the director requested two items: (1) evidence that the beneficiary has a currently effective certificate of registration as a registered foreign legal consultant from the State Bar of California, in compliance with Rule 988 of the California Rules of Court or a temporary or interim permit or other documentation authorizing the beneficiary to practice the

profession; and (2) if the petitioner were to contend that the beneficiary is exempt from Rule 988, a letter from the State Bar of California attesting to the beneficiary's exemption from Rule 988.

As noted previously, the AAO will not accept the amendment filed by the petitioner and will review the record based on the job description submitted with the initial petition, and in its response to the director's first request for evidence. According to these job descriptions, the beneficiary will render legal advice to clients. The petitioner asserted that the beneficiary will be responsible for "advising as w[e]ll as rend[er]ing a legal opinion on different areas of the laws in Israel"; "represent her findings to both the principal attorney in the firm and to the prospective client"; and, will be "involved in the meeting in order to answer any and all questions as well as to render a legal opinion, based on her research and analysis." The petitioner asserted that the beneficiary will be the "sole individual to render such an opinion on the questions that arise or the issues that may arise." Thus, the beneficiary will be rendering legal advice to clients and practicing law in the United States.

In response to the director's second request for evidence, the petitioner submitted a copy of a letter it had received from the State Bar of California, dated November 2, 2006. In this letter, the State Bar of California responded to the petitioner's request for a written statement from the State Bar clarifying whether the beneficiary required registration under Rule 988. In its response, the State Bar stated the following:

Employees of the State Bar are not authorized or permitted to offer advisory opinions or to provide legal advise [sic] or counsel nor to express the opinion of the State Bar on this or other matters. As such, we cannot meet your request to provide you with a written legal advisory opinion regarding your question. If you do wish to obtain a legal opinion, you may wish to consult with an attorney who is licensed to practice law in California who specializes in State Bar admissions matters.

As the State Bar of California was unwilling to provide the type of letter requested by the director, the petitioner consulted with one attorney, [REDACTED] whose practice focuses on Bar-related issues, as suggested by the Bar. [REDACTED] issued a written opinion concluding that the beneficiary in this case does not require registration under Rule 988. However, [REDACTED] indicated that his opinion was based on the petitioner's letter dated January 3, 2006, which materially altered the position and amended the petition. Thus, this opinion letter will not be considered. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

In addition, the petitioner submitted an opinion letter from [REDACTED], Esq. [REDACTED] stated that his firm has filed for foreign legal consultants who provided legal advice and have not advised clients directly. [REDACTED] further stated that the foreign legal consultants employed at his firm have never registered with the State Bar of California as foreign legal consultants. [REDACTED] stated that he understood that the "potential employee would only research and advise only the attorney." As discussed above, according to the initial job descriptions submitted by the petitioner, the beneficiary will go beyond advising the attorney and will also render legal advice to clients. Therefore, the opinion letter is based on

a fact that has not been established in the record. The petitioner submitted a third opinion letter from [REDACTED], which is almost identical to the letter discussed above and will also not be considered for the above-mentioned reasons.

The AAO disagrees with the petitioner and [REDACTED] that the beneficiary does not require registration under Rule 988. Registration under Rule 988 allows a foreign-trained attorney to "render legal services"<sup>2</sup> in California. As stated by the petitioner and demonstrated by this record of proceeding, the proposed duties to be performed by the beneficiary will include legal services and thus the beneficiary must be registered under Rule 988. Thus, the beneficiary is not qualified to perform the duties of the specialty occupation. 8 C.F.R. § 214.2(h)(4)(v).

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

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.

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<sup>2</sup> See 2006 California Rules of Court, Rule 988(d), <http://www.courtinfo.ca/gov/rules/titlethree/title3-103.htm>.