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FILE: WAC 07 072 50154 Office: CALIFORNIA SERVICE CENTER Date: JUL 10 2008

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the AAO. The appeal will be sustained. The petition will be approved.

The petitioner is an immigration law firm. It seeks to extend the employment of the beneficiary as a technical publications writer. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 determined that the duties of the proffered position resembled the duties of a paralegal, an occupation that is normally not considered a specialty occupation. On appeal, the petitioner asserts the director: (1) erroneously interjected speculation rather than basing the decision on the evidence provided by the petitioner; (2) erroneously reviewed a job title and description of a paralegal under the presumption that a person working for a law firm could or would fill this type of position; (3) failed to issue a request for evidence (RFE) identifying specific issues to be addressed; and (4) failed to consider previously approved petitions filed on behalf of this beneficiary by this petitioner by noting errors in the previously approved petitions, substantial changes in circumstances or new material evidence adversely impacting the prior approvals.

The record of proceeding before the AAO contains: (1) the Form I-129 filed January 16, 2007 with supporting documentation; (2) the director's March 29, 2007 RFE; (3) the petitioner's June 19, 2007 response to the director's RFE; (4) the director's July 23, 2007 denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Upon review of the duties of the proffered position as those duties specifically relate to the petitioner's business, the AAO finds that the duties described and the documentation submitted in support of those duties is sufficient to establish the proffered position as a specialty occupation. The nature of the duties as described and documented require the performance of duties that are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has established the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4). Accordingly, the AAO withdraws the director's determination that the proffered position is not a specialty occupation. The beneficiary has received a bachelor's of art degree in communication and thus is eligible to perform the duties of a technical publications writer, a specialty occupation in this instance.

The record reflects that the beneficiary has been in the United States, in H-1B status, since March 23, 2001. The record also includes evidence that the beneficiary has been approved for an immigrant visa based on a labor certification with a priority date of November 28, 2003. The petitioner filed the instant petition on January 16, 2007, requesting that the beneficiary be granted an additional three years of H-1B status pursuant to the American Competitiveness in the Twenty-First Century Act (AC-21) (as amended by the Twenty-First Century DOJ Appropriations Authorization Act (DOJ-21)). The requested start date of employment in the petition is March 24, 2007.

As a general rule, section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4), provides that "the period of authorized admission of [an H-1B nonimmigrant] shall not exceed 6 years." However, AC-21 removed the six-year

limitation on the authorized period of stay in H-1B visa status for aliens whose labor certifications or immigrant petitions remain pending due to lengthy adjudication delays, and DOJ-21 broadened the class of H-1B nonimmigrants able to avail themselves of this provision.

As amended by section 11030(A)(a) of DOJ-21, section 106(a) of AC-21 states the following:

(a) EXEMPTION FROM LIMITATION. -- The limitation contained in section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. § 1184(g)(4)) with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act (8 U.S.C. § 1101(a)(15)(H)(i)(b)), if 365 days or more have elapsed since the filing of any of the following:

(1) Any application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. § 1182(a)(5)(A)), in a case in which certification is required or used by the alien to obtain status under section 203(b) of such Act (8 U.S.C. § 1153(b)).

(2) A petition described in section 204(b) of such Act (8 U.S.C. § 1154(b)) to accord the alien a status under section 203(b) of such Act.

Section 104(c) of AC21 provides that:

Notwithstanding section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. § 1184(g)(4)), any alien who –

- (1) is the beneficiary of a petition filed under section 204(a) of that Act (8 U.S.C. § 1154(b)) for a preference status under paragraph (1), (2), or (3) of section 203(b) of that Act (8 U.S.C. § 1153(b)); and
- (2) is eligible to be granted that status but for application of the per country limitations applicable to immigrants under those paragraphs,

may apply for, and the Attorney General may grant, an extension of such nonimmigrant status until the alien's application for adjustment of status has been processed and a decision made thereon.

The beneficiary has an approved I-140 petition with a priority date of July 14, 2006. Due to country limitations at the time of filing the current petition, the beneficiary is unable to adjust to permanent resident status, and thus, the beneficiary is eligible for a three-year extension of H-1B status pursuant to AC-21 § 104(c). See, U.S. Citizenship and Immigration Services Memorandum, *Supplemental Guidance Relating to Processing Forms I-140 Employment Based Immigrant Petitions and I-129 H-1B Petitions, and Form I-485 Adjustment Applications Affected by the American Competitiveness in the Twenty-First Century Act of 2000 (AC21)(Public Law 106-313), as amended, and the American Competitiveness and Workforce Improvement*

Act of 1998 (ACWIA), Title IV of Div. C. of Public Law 105-277, Donald Neufeld, Acting Associate Director, Domestic Operations (May 30, 2008).

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained. The director's decision is withdrawn and the petition is approved.