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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

FILE: WAC-02-081-55027 OFFICE: CALIFORNIA SERVICE CENTER DATE:

IN RE: Petitioner: [redacted]
Beneficiary:

JAN 22 2004

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)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a law office that employs two persons and has a gross annual income of $300,000. It seeks to employ the beneficiary as a foreign legal consultant. The director denied the petition because the position does not qualify as a specialty occupation.

On appeal, the petitioner asserts that the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), erroneously denied the petition on the ground that a bachelor's degree is not a normal minimum requirement for entry into the occupation.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

> an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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.

In the letter accompanying the I-129 petition, the petitioner described the proposed duties of the foreign legal consultant as follows:

> 1. Research and analyze Philippine law sources such as [the] Constitution, statutes, treaties[,] and judicial decisions for review, approval[,] and use by [the] attorney in cases involving extradition between the U.S. and the Philippines and [the] effect of Philippine laws on U.S. legal status and on U.S. citizens residing in the Philippines;
> 2. Research Philippine laws, investigate facts[,] and prepare documents to assist [the] U.S. attorney on matters involving interpretation of Philippine constitutional, criminal, business, family[,] and tax laws;
> 3. Assist [the] U.S. lawyer in drawing up legal documents concerning legal matters and privileges in accordance with Philippines and U.S. laws;
> 4. Obtain and analyze data to recommend solutions utilizing knowledge and principles of Philippines and U.S. laws;
> 5. Conduct study [sic] on cases to obtain [the] data required for [a] solution; and
> 6. Advise [the] U.S. attorney on [the] methods and procedures of solving Philippine legal problems and determine laws applicable on each case.

On March 5, 2002, the director requested that the petitioner submit: a detailed job description and an explanation of why the position requires a person who has a college degree or its

equivalent in the occupational field; evidence that would show that the position qualified as a specialty occupation; and copies of the company's past and present job announcements.

In response, counsel's letter of May 24, 2000 stated that according to the regulations, positions in the legal field qualify as specialty occupations in that they require a bachelor's degree or higher for entry into the occupation; thus, the proffered position is a specialty occupation. And, the letter mentioned that the second edition of *The Enhanced Guide for Occupational Exploration* states a bachelor's degree is required for entry into consultant positions. The letter conveyed that the employer did not advertise the position because it relied on word-of-mouth referrals from other lawyers. Finally, the letter described the percentage of time the beneficiary would spend performing each duty.

On June 26, 2002, the director denied the petition, finding that the position was not a specialty occupation. Citing the 2002-2003 edition of the Department of Labor's *Occupational Outlook Handbook*, the director found that the beneficiary's duties reflected those performed by paralegals, and that the *Handbook* indicates the industry does not require a bachelor's degree for entry into the occupation. The director stated that the submitted evidence neither indicates the petitioner normally requires applicants to possess baccalaureate or higher degrees in the field or proves the position has complexity or authority beyond the norm in the occupational field. Last, the director explained that the proffered position's duties could be performed by an experienced person whose educational training falls short of a baccalaureate degree.

On appeal counsel asserts that the proffered position qualifies as a specialty occupation.

Counsel asserts that the petitioner has satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires the petitioner to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the occupation. In the first place, counsel states that the Service's analogy of a foreign legal consultant to a paralegal is incorrect because the paralegal's primary role is to help the lawyer prepare cases, whereas the foreign legal consultant will primarily perform legal research and analysis of foreign laws, "recommending legal solutions, conducting studies, and providing advice to the U.S. lawyer on the applicability of foreign laws." According to counsel, a paralegal does not have the competency and educational training to do these duties. Counsel asserts that the paralegal's role is to assist; she does not recommend, perform studies or advise. Second, counsel maintains that experts on foreign laws are typically known as legal consultants, and counsel refers to Internet advertisements by Key and Dixon, a British law firm, and Tilleke & Gibbins, a law firm located in Thailand.

Counsel states that legal consultants are common in the industry and differ from paralegals in educational training and capabilities.

Counsel's assertions are without merit. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation. The 2002-2003 edition of the *Handbook* is instructive in determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the occupation. Here, according to the *Handbook*, the beneficiary's duties correspond to the duties of paralegals. In the *Handbook*, at page 214, a paralegal, also called a legal assistant, is described as follows:

> Paralegals investigate the facts of cases and ensure that all relevant information is considered. They also identify appropriate laws, judicial decisions, legal articles, and other materials that are relevant to assigned cases. After they analyze and organize the information, paralegals may prepare written reports that attorneys use in determining how cases should be handled. Should attorney's decide to file lawsuits . . . paralegals help prepare the legal arguments, draft pleadings and motions to be filed with the court, obtain affidavits, and assist attorneys during trials. Paralegals also organize and track files. . . .
>
> Paralegals also . . . help draft contracts, mortgages, separation agreements, and trust documents.

The beneficiary's duties reflect those of paralegals: both positions investigate facts of cases; research laws, judicial decisions, and legal articles; obtain, analyze, and organize information; and prepare written documents and draft legal documents. It is important to note that, on page 214 of the *Handbook*, the Department of Labor states that paralegals and legal assistants are explicitly prohibited from carrying out duties that are considered to be the practice of law, such as giving legal advice. Thus, the beneficiary would be prohibited from giving legal advice to attorneys.

According to the *Handbook*, one becomes a paralegal in several ways. The trend is employers usually require formal paralegal training obtained through either associate or bachelor's degree programs or certification programs. Some employers prefer graduates of four-year paralegal programs or college graduates who have completed paralegal certificate programs. Others prefer to train paralegals on the job, hiring college graduates with no legal experience.

Accordingly, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because a baccalaureate or higher degree or its equivalent is not the minimum for entry into the proffered position.

Counsel claims that the petitioner established the second criterion, namely, that the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the offered position is so complex or unique that it could be performed only by an individual with a degree. Counsel states that legal consultants are common in the industry and differ from paralegals in educational training and capabilities. Although the petitioner states that the position of foreign legal consultant entails advising about Philippine laws, the *Handbook* clearly indicates that paralegals and legal assistants are explicitly prohibited from carrying out duties that are considered to be the practice of law, such as giving legal advice. This restriction both limits and defines the duties of the petitioner's foreign legal consultant, making it very difficult to determine not only the position's actual duties but also its respective complexity or uniqueness. Moreover, the Internet pages do not establish that foreign legal consultants are common in the industry. The two law firms are located overseas, not in the United States. Neither of the firms discusses the position of a foreign legal consultant. Consequently, the Internet pages are irrelevant to this proceeding. The petitioner, therefore, fails to satisfy the second criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A).

In addition, the record does not establish the third criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A), that the petitioner normally requires a bachelor's degree or its equivalent for the proffered position.

Finally, the record does not establish the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) - 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. As previously discussed, because the law prohibits foreign legal consultants from giving legal advice, the nature of the specific duties are limited and reflect those performed by paralegals and legal assistants.

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.