



U.S. Citizenship
and Immigration
Services

D,



FILE: WAC 07 145 52237 Office: CALIFORNIA SERVICE CENTER Date: **DEC 08 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
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 an international legal consultant/researcher and writer. 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 April 2, 2007; (2) the director's requests for additional evidence (RFEs), dated May 1, 2007 and August 28, 2007; (3) the petitioner's responses to the RFEs; (4) the director's denial letter, dated October 11, 2007; and (5) the Form I-290B and supporting documentation, filed on November 9, 2007. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on two grounds: (1) that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation, and (2) that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation. In finding that the proposed position does not qualify for classification as a specialty occupation, the director found that the duties of the proposed position were essentially those of a paralegal. In finding that the beneficiary does not qualify to perform the duties of a specialty occupation, the director found that although the proposed position is essentially that of a paralegal, the beneficiary did not qualify to perform its duties because she lacks licensure to practice law in the State of Illinois.

Section 214(i)(1) of the Immigration and Nationality Act (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:

[A]n 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. *These occupations all require a baccalaureate degree in the specific specialty as a*

minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The AAO disagrees with the director's characterization of the duties of the proposed position as essentially those of a paralegal. The petitioner has submitted detailed information regarding the duties of its proposed position, and they exceed the occupational scope of those typically performed by paralegals. For the reasons stated herein, the description of the duties of the proposed position, in combination with this particular record's information about the petitioner's business, establishes that the duties of the proposed position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The petitioner states that it is seeking the beneficiary's services as an international legal consultant/researcher and writer. On the Form I-129, the petitioner described the beneficiary's proposed duties as follows:

Handling cases of the Employer primarily in the area of research. Research shall encompass US law, International Law, as well as the domestic laws in the Philippines to provide updates and advise the principal attorney in addressing preliminary questions clients may have as to personal and family laws, criminal laws, labor law, property law, tax law, and corporate/commercial law, which may arise in the course of their seeking advice from the law office. Legal issues to be handled and researched on shall involve Money Laundering issues, correction of entries in civil registry (e.g. birth certificates), annulment of marriages, investor visas, inter-country adoption laws, NBI (National Bureau of Investigation) and criminal matters in order to ensure that applicants/clients are not barred from admission into US territory due to crimes committed in the Philippines.

Responsibilities shall include: (1) Interviewing and gathering client information, and coordinating with the principal attorney in the process of providing appropriate legal services; (2) evaluating and analyzing factual and legal issues, examining documents and researching legal precedents and statutory updates in the process of determining the merits of cases and availability of legal basis for initiating, or defending against, legal action/proceedings; (3) keeping abreast of developments in domestic laws in the Philippines, particularly conducting research to answer specific issues of clients, particularly those who come from the Philippines; (4) researching laws, regulations and evolving trends in US immigration laws and policies; (5) co-authoring informative articles and newsletters which are regularly published by the firm.

In the petitioner's response to the director's first RFE, dated June 19, 2007, the petitioner further explained that the proposed position includes, "case management, assessment of facts surrounding a case, and determination by the trained legal mind of the legal effect of such facts and conditions." The petitioner further stated that the beneficiary is "expected to work

independently, and shall be given a high level of responsibility.” The petitioner also submitted a breakdown of the duties to be performed by the beneficiary. The beneficiary will spend 50 percent of her time on legal research and critical legal analysis. In part, this will include research and the examination of legal documents in order to “determine the merits of the case, and availability of legal remedies;” “preparation of wills, deeds, and contracts between U.S. and Philippine-based clients;” and, “coordinate[ion] with Philippine government offices, judicial and administrative bodies, to handle legal issues involving correction of entries in civil registries, annulment or declaration of nullity of Philippine marriages, investors visas for Filipino businessmen and corporations, inter-country adoptions, and NBI clearances.”

In response to the director’s notice of intent to deny, the petitioner submitted a letter, dated September 26, 2007, and explained that the majority of the business of the law office is directed to Filipino clientele and it is “necessary for someone among the staff who is knowledgeable of Philippine laws affecting clients.” The petitioner further explained that the beneficiary recently passed the bar examination in her home country and “with this additional credential, she will be able to advise Filipino clients in the US about Philippine law.”

In determining whether a proposed position qualifies as a specialty occupation, USCIS 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 as required by the Act.

A review of the duties of the proposed position finds them most closely aligned to the responsibilities of a lawyer. The proposed position thereby qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a showing that the nature of the specific duties of the proposed position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

Accordingly, the proposed position qualifies for classification as a specialty occupation, and this basis of the director’s denial must be withdrawn.

The second issue to be addressed on appeal is whether the beneficiary qualifies to perform the duties of a specialty occupation. 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.

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 qualifies under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The director did not question whether the beneficiary qualifies under this criterion, however. Rather, she found her unqualified under 8 C.F.R. § 214.2(h)(4)(v). Pursuant to 8 C.F.R. § 214.2(h)(4)(v), if the State requires licensure in order to work in the specialty occupation, the beneficiary must possess the license prior to approval of the H-1B petition:

(A) General. 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.

(B) Temporary licensure. If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

(C) Duties without licensure. In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

(D) H-1C nurses. For purposes of licensure, H-1C nurses must provide the evidence required in paragraph (h)(3)(iii) of this section.

(E) Limitation on approval of petition. Where licensure is required in any occupation, including registered nursing, the H petition may only be approved for a period of one year or for the period that the temporary license is valid, whichever is longer, unless the alien already has a permanent license to practice the occupation. An alien who is accorded H classification in an occupation which requires licensure may not be granted an extension of stay or accorded a new H classification after the one year unless he or she has obtained a permanent license in the state of intended employment or continues to hold a temporary license valid in the same state for the period of the requested extension.

According to the 2008-2009 edition of the *Handbook*:

To practice law in the courts of any state or other jurisdiction, a person must be licensed, or admitted to its bar, under rules established by the jurisdiction's highest court. All States require that applicants for admission to the bar pass a written bar examination; most States also require applicants to pass a separate written ethics examination.

The director found that the duties of the proposed position involve the practice of law. As the beneficiary does not possess Illinois licensure, the director concluded that the beneficiary would not be able to practice law.

As noted above, in the petitioner's response to the director's first request for evidence, dated June 19, 2007, the petitioner further explained that the proposed position includes, "case management, assessment of facts surrounding a case, and determination by the trained legal mind of the legal effect of such facts and conditions." The petitioner further stated that the beneficiary is "expected to work independently, and shall be given a high level of responsibility." The petitioner also submitted a breakdown of the duties to be performed by the beneficiary. The beneficiary will spend 50 percent of her time on legal research and critical legal analysis. In part, this will include research and the examination of legal documents in order to "determine the merits of the case, and availability of legal remedies;" "preparation of wills, deeds, and contracts between U.S. and Philippine-based clients;" and, "coordinate[ion] with Philippine government offices, judicial and administrative bodies, to handle legal issues involving correction of entries in civil registries, annulment or declaration of nullity of Philippine marriages, investors visas for Filipino businessmen and corporations, inter-country adoptions, and NBI clearances."

In response to the director's notice of intent to deny, the petitioner submitted a letter, dated September 26, 2007, and explained that the majority of the business of the law office is directed to Filipino clientele and it is "necessary for someone among the staff who is knowledgeable of Philippine laws affecting clients." The petitioner further explained that the beneficiary recently

passed the bar examination in her home country and “with this additional credential, she will be able to advise Filipino clients in the US about Philippine law.”

In reviewing the duties of the proffered position, it appears that the beneficiary will be providing legal advice to clients and thus, she must obtain a license in order to work as a legal consultant in Illinois. The Illinois Supreme Court is responsible for the admission, registration and discipline of lawyers in Illinois. According to the Illinois Rules on Licensing Foreign Lawyers as Legal Consultants, Rule 712, the Supreme Court of Illinois may provide a foreign legal consultant a license without examination if the individual qualifies under the rule specifications. A route for foreign lawyers to practice in Illinois is available via a Foreign Legal Consultant license which permits foreign lawyers restricted legal practice within the State on the basis of their home country qualifications and experience.

In reviewing Section (e) of Rule 712, it states that a “person licensed as a foreign legal consultant under this rule may render legal services and give professional advice within this state only on the law of the foreign country where the foreign legal consultant is admitted to practice.” Since the beneficiary would provide legal advice to clients regarding Philippine law, the beneficiary is required to obtain a license from the Illinois Supreme Court. The petitioner and beneficiary did not provide any documentation evidencing that the beneficiary received the proper license from the Illinois Supreme Court to work as a foreign legal consultant.¹

Pursuant to 8 C.F.R. § 214.2(h)(4)(v)(E), if a license is required, the H petition may only be approved for a period of one year as stated below:

(E) Limitation on approval of petition. Where licensure is required in any occupation, including registered nursing, the H petition may only be approved for a period of one year or for the period that the temporary license is valid, whichever is longer, unless the alien already has a permanent license to practice the occupation. An alien who is accorded H classification in an occupation which requires licensure may not be granted an extension of stay or accorded a new H classification after the one year unless he or she has obtained a permanent license in the state of intended employment or continues to hold a temporary license valid in the same state for the period of the requested extension.

Pursuant to Rule 712 of the Illinois Rules on Licensing Foreign Lawyers as Legal Consultant, the state of Illinois has a specific license available to a foreign lawyer who will work as a legal

¹ It is further noted that the petitioner indicated in the response to the director's first RFE that the beneficiary's duties would also include handling issues involving "investor visas for Filipino businessmen and corporations" and "inter-country adoptions." While the petitioner indicates that the beneficiary's duties in the regard will be limited to Filipino legal issues, these subjects themselves appear instead to be U.S. immigration law related and, as such, it is unlikely that even an Illinois foreign legal consultant license will be sufficient to permit the beneficiary to perform all of the duties of the proffered position.

consultant in the United States. In reviewing the requirements to obtain a license as a legal consultant, however, the beneficiary is not eligible for this license. According to Rule 712(a)(1), a license may be granted to an applicant who has been admitted to practice in a foreign country, is in good standing, and has engaged in the practice of law of such country “for a period of not less than five of the seven years immediately preceding the date of his or her application.” According to the beneficiary’s resume, she obtained her Juris Doctor degree from Ateneo de Manila School of Law in 2006. The petitioner also stated that the beneficiary passed the examination to practice law in the Philippines in 2007. The current petition was filed on April 2, 2007. Since the applicant received her Juris Doctor degree in 2006 and did not pass the examination until 2007, she does not have a period of at least five years in the past seven years of practicing law as an attorney in her home country. In light of this, USCIS will not approve the instant petition for one year as the beneficiary is not currently qualified and, more importantly, cannot become qualified within one year for a state license to perform duties as a legal consultant.

On appeal, the petitioner noted that USCIS approved other petitions that had been previously filed on behalf of other beneficiaries with similar circumstances. If the previous nonimmigrant petitions were approved based on the same assertions, facts, and evidence contained in the current record, the approvals 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 USCIS 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 not established that the beneficiary is qualified to perform the duties of the proffered position.

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.