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FILE: SRC 04 139 51487 Office: TEXAS SERVICE CENTER Date: NOV 02 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, Director
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 associate attorney at its Houston office. 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 basis that the petitioner had failed to establish that the beneficiary qualifies to perform the services of a specialty occupation. The director found that the beneficiary's lack of either permanent or temporary law licensure precluded approval of the petition.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's first request for evidence, dated April 23, 2004 (RFE); (3) the petitioner's RFE response and supporting documentation, dated May 24, 2004; (4) the director's second RFE, dated May 25, 2004; (5) the petitioner's RFE response and supporting documentation, dated May 26, 2004; (6) the director's denial letter; and (7) the Form I-290B and appellate brief. The AAO reviewed the record in its entirety before issuing its decision.

As a preliminary matter, the AAO notes that the proposed position's status as a specialty occupation is not at issue; the AAO accepts that the proposed position as an associate attorney qualifies for classification as a specialty occupation.

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 2004-2005 edition of the Department of Labor's *Occupational Outlook 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 jurisdictions also require applicants to pass a separate written ethics examination.

The initial submission included a copy of the beneficiary's license to practice law in Spain, but made no mention of his qualifications to practice law in Texas. As such, the director issued an RFE on April 23, 2004, requesting evidence of his bar licensure in Texas. The director noted that if the beneficiary did not possess such licensure, the longest period of validity that the petitioner would be able to obtain for the petition would be one year.

In her RFE response, counsel submitted a letter from the petitioner, dated May 19, 2004, which stated the following:

Associate Attorneys can begin working for the firm prior to obtaining the license to practice law. They work with senior associates and partners and are supervised on all of their projects. To be considered as an associate at [the petitioner] the associates must graduate from an accredited law school and possess a J.D. or equivalent degree. The associates must take the bar exam. [The beneficiary] will sit for the July 2004 bar exam in California. We have enclosed a copy of [the beneficiary's] acceptance to take the California Bar Exam.

It is customary for our law firm as well as other law firms to hire attorneys without being licensed, and allow them to work under the strict supervision of more senior attorneys and partners while the applicant is awaiting to take the bar exam or waiting the results of the bar exam. . . .

While counsel's faxed response explained the *petitioner's* criteria for hiring associate attorneys prior to their obtaining licensure, it did not address the *regulatory* criteria raised by the director. As such, this response did not address the director's RFE.

The director therefore issued a second RFE. In her May 25, 2004 RFE, the director attempted to clarify her request, stating the following:

In order to practice as an attorney, the beneficiary must have the required education and a state license, which authorizes her [sic] to fully practice the specialty occupation and be

immediately engaged in that specialty in the [S]tate of Texas. The beneficiary will either perform duties as an Attorney or Paralegal. The position of Paralegal does not qualify as a specialty occupation because a baccalaureate or higher degree or its equivalent is not the minimum education required for entry into the position. Please submit evidence that the beneficiary is licensed to work as an Attorney in the [S]tate of Texas.

The director also noted that although her previous RFE had referenced occupations that allow employment with temporary licensure, the practice of law was not such an occupation.

Counsel's May 26, 2004 response did not address this issue. Rather, counsel resubmitted evidence already contained in the record of proceeding: counsel submitted a copy of her previous RFE response, as well as a proof that her previous facsimile was transmitted properly. As such, the director denied the petition on June 5, 2004.

On appeal, counsel contends that the beneficiary should be granted one year of H-1B status pursuant to 8 C.F.R. § 214.2(h)(4)(v)(E), *supra*, arguing that the word "or" in the regulation means that the petition should be approved with a validity period of one year or for the period during which a temporary license is valid, whichever is shorter. In this case, counsel asserts, the petition should be approved for a period of one year, since temporary licensure is not available. Counsel also contends that the petition should be approved pursuant to 8 C.F.R. § 214.2(h)(4)(v)(C), *supra*.

However, both of counsel's contentions fail. Neither subsection of 8 C.F.R. § 214.2(h)(4)(v) cited by counsel provides any relief in this case.

The beneficiary is not qualified under 8 C.F.R. § 214.2(h)(4)(v)(E). This regulation applies in cases in which a beneficiary possesses temporary licensure. In such cases, the petition will be granted a period of validity of either one year or the period during which the temporary license is valid, whichever is shorter. However, in this case the beneficiary does not possess temporary licensure, so a determination of which period of time is shorter cannot be made, and 8 C.F.R. § 214.2(h)(4)(v)(E) does not apply. 8 C.F.R. § 214.2(h)(4)(v)(E) would be applicable here only if the beneficiary possess temporary licensure.

Nor can the petition be approved under 8 C.F.R. § 214.2(h)(4)(v)(C). While this regulation does permit an alien without licensure to work "under the supervision of licensed senior or supervisory personnel," counsel has offered no evidence that the State of Texas allows an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. Thus, the beneficiary is not qualified under this regulation.

The petitioner has failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation, and the petition was properly denied. The AAO will 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.