



U.S. Citizenship
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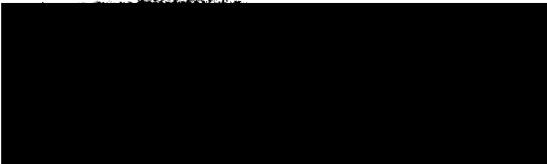
FILE: LIN 04 091 50011 Office: NEBRASKA SERVICE CENTER Date: OCT 05 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center 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 and seeks to employ the beneficiary as a legal researcher. The petitioner 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 because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

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

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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:

[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 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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) 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.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a legal researcher. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Research and analyze law sources such as statutes, recorded judicial decisions, legal articles, legal codes, etc.;
- Prepare legal documents such as briefs, pleadings, appeals, wills, contracts, initial and amended articles of incorporation, stock certificates and other securities, buy-sell agreements, closing papers and binders, deeds and trust instruments for review, approval and use of an attorney;
- Investigate the facts and law of a case to determine causes of action and then prepare the case;
- Prepare affidavits of documents and maintain the document file;
- Prepare legal briefs and legal documentation for supervising attorney approval and for the firm’s clients;
- Assist with the gathering of evidence in divorce, civil, criminal and other cases and legal matters to formulate defenses, initiate legal action or effectuate legal advice and representation;
- Assist with the development of strategy, arguments and testimony in preparation for case presentation;
- Assist the supervising attorney with interpretation of laws, rulings, and regulations for individuals and businesses;
- Confer with colleagues within specialty areas of law to establish and verify the basis for legal proceedings;

- Direct and coordinate activities of the legal secretary and other legal support personnel;
- Act as an arbitrator and liaison between disputing parties; and
- Perform other duties as assigned.

In its letter of February 6, 2004, the petitioner states that it requires the attainment of a Juris Doctorate Degree as a minimum requirement for entry into the proffered position. In response to the director's request for evidence, however, the petitioner states that to qualify for the position, employees should have completed their law degree or be in the later part of the process of completing the degree. The petitioner acknowledges that it presently employs another individual in the offered position who is a presently a law student, not having yet completed his law degree.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position fall within those noted for law clerks. The *Handbook* notes that the most significant source of education or training for law clerks is a bachelor's degree, but does not indicate that the degree need be in any specific specialty. Law clerks are usually students fulfilling the requirements of a Juris Doctor degree, or law school graduates fulfilling attorney licensing requirements. As previously stated, the petitioner, in this instance, does not require its law clerks/legal researchers to have completed their law degrees. The petitioner employs legal researchers who are still law students not having yet obtained a law degree. While a bachelor's degree is a prerequisite for entry into law school, the degree requirement is not restricted to any particular field of study. The petitioner has, accordingly, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations, and offers no evidence in this regard. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner indicates that it normally requires a degree or its equivalent for the proffered position. The documentation submitted by the petitioner in support of this assertion consists of a statement from the petitioner's Director of Human Resources [REDACTED] Ms. [REDACTED] states that for years the petitioner has employed legal researchers to assist attorneys with research projects, and in order to qualify for those positions individuals must have completed their law degree or be in the later part of completing the degree.

She indicates that the petitioner currently employs another legal researcher who is in the process of completing his law degree. The petitioner does not, however, provide supporting documentary evidence to corroborate Ms. [REDACTED] statement. Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). Further, the petitioner's own statements establish that neither a baccalaureate level degree in a specific specialty or a law degree is normally required by it for entry into the offered position. A bachelor's degree in a specific specialty is not required for entry into law school, and individuals gain entry with degrees in a wide range of educational disciplines. The petitioner does not require a law degree for employment as a legal researcher or law clerk as it regularly hires individuals for those positions who have yet to complete the requirements of a law degree program. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties appear to be routine for the position of law clerk in the industry. The petitioner has, therefore, failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.