

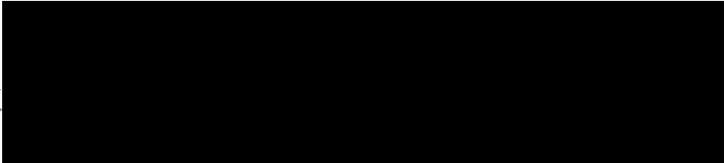


U.S. Citizenship
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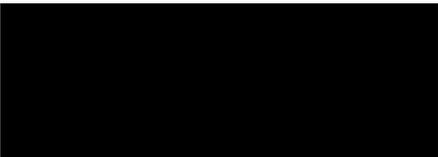


FILE: EAC 03 217 52657 Office: VERMONT SERVICE CENTER Date: JAN 27 2006

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:



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 sustained. The petition will be approved.

The petitioner is an electrical, communications, and network solutions contractor that seeks to employ the beneficiary as a contract administrator and to classify him 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 grounds that the petitioner failed to establish that the proposed position meets the definition of specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel asserts that the position is analogous to a legal consultant. The AAO determines that the proposed position is that of a contract administrator and is 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.

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.

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 bachelor's or higher degree, but one in a specific field of study directly related to the proposed position.

The record of proceeding before the AAO contains: (1) 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) Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a contract administrator. Evidence of the beneficiary's duties includes the petitioner's support letter attached to the Form I-129 and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary's duties would include reviewing contracts for construction management and all system disciplines; analyzing contracts to detect possible omissions and to verify conformity with the law; initiating changes in standard form contracts; converting agreements into contract form or preparing amended agreements for review by the petitioner's outside counsel; providing exhibits and associated attachments in support of contracts, specifications, and agreements; maintaining a customer contract file system; negotiating contracts; assisting in finalizing contractual amounts, terms and conditions with the petitioner's international partners; providing exhibits and associated attachments in support of contracts; initiating purchase requisitions; reviewing bids; reviewing change orders and authorization requests; and maintaining right of way and dig safe documents.

The director found that the proposed position was not a specialty occupation. The director found that the proposed position was that of a paralegal and noted that a variety of liberal arts degrees were acceptable for most paralegal positions. The director also found that the petitioner had not submitted evidence to establish an industry or company standard that required a bachelor's degree for similar positions.

On appeal, counsel asserts that the director incorrectly concluded that the position is that of a paralegal. Counsel asserts that the position is more like that of a legal consultant, an occupation deemed by the AAO to be a specialty occupation.

Upon review of the record, the AAO concludes that the petitioner has established that its contract administrator position meets one the four criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is a specialty occupation.

The proposed position meets the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) - a bachelor's or higher degree or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the particular position. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* for its information about the duties and educational requirements of particular occupations. The AAO disagrees both with the director that the proposed position is a paralegal position and with the petitioner that the position is a legal consultant position. The AAO finds that the duties are parallel to those of contract administrators, or administrative services managers. The *Handbook* describes what contract administrators do in the following way:

[S]ome administrative service managers work primarily as office managers, contract administrators, or unclaimed property officers. . . . Administrative service managers who work as contract administrators...oversee the preparation, analysis, negotiation, and review of contracts related to the purchase or sale of equipment, materials, supplies, products, or services.

Regarding the educational requirements for these positions, the *Handbook* notes that:

Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance. Regardless of major, the curriculum should include courses in office technology, accounting, business mathematics, computer applications, human resources or business law.

The evidentiary record establishes that the proposed position requires a theoretical and practical application of a body of highly specialized knowledge and that a bachelor's or higher degree in the specific field of study is a minimum for entry into the occupation in the United States. The job description contained in the petition describes duties that require at least a bachelor's degree in business, finance, or law. The *Handbook* supports the petitioner's assertion that the proposed position requires at least a bachelor's degree in law or a related field of study. Thus, the petitioner has established that the proposed position is a specialty occupation.

The AAO notes that the beneficiary is qualified to perform the duties of the proposed position: the record reflects that he holds the equivalent of a U.S. bachelor's degree in law from the College of Social Technologies in Latvia and has completed courses in contract law, finance and tax law, commercial law, land law, and management.

The AAO also notes that the director found that the beneficiary had not maintained F status and was therefore ineligible for a change of status. That finding was not addressed on appeal is not before the AAO. The request for the nonimmigrant classification will be approved, however, the beneficiary may be ineligible for a change of status and extension of stay for failure to maintain lawful status.

The burden of proving eligibility for the benefit sought rests entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained. The petition is approved.