



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



D2

FILE: SRC 04 200 51146 Office: TEXAS SERVICE CENTER Date: **JUL 26 2006**

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:

SELF-REPRESENTED

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.

For *Michael T. Kelly*
Robert P. Wiemann, Chief
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 practice in South Florida that seeks to employ the beneficiary as a foreign law advisor and to classify her 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 failed to establish that its proposed position was a specialty occupation.

Counsel submitted a timely Form I-290B on March 14, 2005 and indicated that she would send a brief and/or additional evidence to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence. Therefore, the record is complete.

The issue before the AAO is whether the proposed position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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 above criteria to mean not just any bachelor's or higher degree, but one in a specific specialty that is 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 evidence (RFE); (3) counsel's response to the RFE; (3) the director's denial letter; and (4) Form I-290B, with the petitioner's brief and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

The petitioner seeks the beneficiary's services as a foreign law advisor. Evidence of the beneficiary's duties includes: the Form I-129 and petitioner's support letter; the response to the RFE; and the Form I-290B. The petitioner stated that the beneficiary's duties would entail, in part, advising the office on matters affecting family relations and the laws that encompass these matters such as whether a divorce from a foreign jurisdiction is completed, legal and final, what laws make adoption legal, and how to implement them; advising the office on issues such as what constitutes a conviction, whether a particular incident constitutes a felony or a misdemeanor, as well as clarifying the different sanctions applicable to different crimes ranging from fines to jail time; advising the office on matters such as what a country's tariffs are, what commercial pacts or treaties exist between two or more Latin American countries and other similar matters; and researching Latin American laws through the use of Latin American search engines. The petitioner stated that the position requires a bachelor's degree in law or a related field.

The director found that the documents the petitioner submitted did not adequately establish that the proposed foreign law advisor position qualified as a specialty occupation.

On appeal, the petitioner asserts that the position requires at least a bachelor's degree in law and that it is a specialty occupation. The petitioner asserts that the job ads it submitted show that employers require their foreign law advisors to possess degrees in law. The petitioner asserts that a foreign law consultant is a foreign licensed attorney who assists U.S. attorneys in providing clients with advice on laws of the foreign country or jurisdiction where the foreign attorney received his or her degree. The petitioner asserts that, although its clients are from all over Central and South America and the beneficiary is from Peru, the laws of all Latin American countries follow the Napoleonic Code, therefore the laws of these countries are all essentially the same and the beneficiary is qualified to advise on all of them. Counsel asserts that CIS has approved other similar H-1B petitions including one for the beneficiary.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has not established that the proposed position meets any of the criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

As a preliminary matter, the AAO will address the petitioner's assertion that this petition should be approved because CIS has approved petitions for foreign law advisors and for the beneficiary, in the past. This record of proceeding does not contain all of the supporting evidence submitted to the service center in those prior cases. In the absence of all of the corroborating evidence contained in that records of proceeding, the documents submitted by the petitioner are not sufficient to enable the AAO to determine whether the position offered in the prior cases were similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior cases were similar to the proposed position or was approved in error, no such determination may be made without review of the original records in their entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approvals of the prior petitions would have been erroneous. CIS is not required to approve 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). Neither CIS nor any other 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).

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title, but reviews the specific duties of the proposed position, combined with the nature of the petitioning entity's business operations. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO agrees with the director that the proposed position is not a specialty occupation but disagrees that the position is that of a foreign law advisor. The AAO routinely consults the *Handbook* for its information about the duties of particular occupations. Based on the petitioner's description and a thorough review of the *Handbook*, the AAO finds that the duties of the proposed position are not those of a foreign law advisor. The Florida state bar allows individuals admitted to practice law in countries other than the United States to render services as legal consultants regarding the laws of the countries in which they are admitted to practice. The Foreign Legal Consultancy rule of the rules regulating the Florida bar defines what a foreign legal consultant is, what a foreign legal consultant is authorized to do, and what the requirements are for certification in the state of Florida to become a foreign legal consultant. This rule emphasizes that the services rendered shall be limited to those regarding the laws of the foreign country. The rule can be accessed on the Internet at <http://www.floridabar.org/divexe/rrtfb.nsf/FV?Openview&Start=1&Expand=16.1#16.1>.

The petitioner has not submitted sufficient documentation to establish that the beneficiary will be working as a foreign legal consultant in the area of Peruvian criminal, family, and commercial law. First, the petitioner has not submitted documentation to show that the beneficiary has been certified by the state of Florida to practice there as a foreign law advisor. Second, the petitioner has not established that the beneficiary's duties will primarily entail advising the petitioner on the laws of Peru, where the beneficiary received her law degree. The petitioner did not provide a detailed description of the proposed duties or of the areas of its practice where the beneficiary's knowledge of Peruvian law would be needed and used. Third, the petitioner asserts that the laws of all Latin American countries follow the Napoleonic Code and therefore family and criminal law are essentially the same in Peru, where the beneficiary got her law degree, as they are in El Salvador and Guatemala, where most of petitioner's clients come from. The petitioner, however, does not submit documentation to support this assertion. Going on 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 Dec. 190 (Reg. Comm. 1972)). Finally, the petitioner asserts that the petitioner will give the petitioner advice in commercial, criminal, and family law, but does not submit documentary evidence to establish that it engages in those types of law, such as membership in a bar association's commercial or family law division, to support this assertion. *Matter of Soffici*. The petitioner is an immigration law firm and the beneficiary's duties will involve working with immigration law and procedures of the United States.

The AAO finds instead, that the proposed duties most resemble those of paralegals, or legal assistants, who, according to the *Handbook*, assume a growing range of tasks in legal offices and perform many of the same tasks as lawyers. Paralegals and legal assistants conduct research and identify appropriate laws, judicial decisions, legal articles, and other materials that are relevant to assigned cases. Paralegals and legal assistants, however, are prohibited from carrying out duties that could be considered the practice of law. The duties described in the *Handbook* are similar to such proposed duties as "researching Latin American laws through the use of Latin American search engines" and determining "what constitutes a conviction."

To determine if the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(1) – 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 turns to the *Handbook's* discussion of the educational requirements for paralegals and legal assistants. Regarding the educational requirements for those in this field, the *Handbook* notes that:

There are several ways to become a paralegal. The most common is through a community college paralegal program that leads to an associate's degree. The other common method of entry, mainly for those who already have a college degree, is through a program that leads to a certification in paralegal studies. A small number of schools also offer bachelor's and master's degrees in paralegal studies. Some employers train paralegals on the job, hiring college graduates with no legal experience or promoting experienced legal secretaries. Other entrants have experience in a technical field that is useful to law firms, such as a background in tax preparation for tax and estate practice or in criminal justice, nursing, or health administration for personal injury practice.

The *Handbook* clearly indicates that jobs in this field do not require a specific bachelor's degree for entry into the field. Employers consider those with liberal arts degrees and relevant work experience suitable for jobs in this area. Employers prefer, but do not require, paralegals or legal assistants to possess bachelor's degrees in specific fields of study. As no specific course of study is required for these occupations, the petitioner fails to establish that a bachelor's or higher degree in a specific field of study is the normal minimum requirement for entry into the proposed foreign law advisor position.

The AAO turns next to the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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 job postings the petitioner submits to support this criterion have no probative value. The announcements are for lawyer positions, which the proposed position is not. Lawyers must possess licenses to practice law. The beneficiary does not. The proposed position most resembles that of a paralegal or legal assistant. Thus, the petitioner has failed to establish that a specific degree requirement is common to the industry in parallel positions among similar firms.

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. To determine if a petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has not submitted evidence to establish its normal hiring practices for the proposed position. In the absence of an employment history for the position, the petitioner has not established that its position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. The second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) is satisfied by establishing that a particular position is so complex or unique that it can be performed only by an

individual with a bachelor's degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in a specific field of study. To the extent that they are depicted in the record, the duties of the proposed position are routine for paralegals and legal assistants, which the *Handbook* indicates may be performed by persons without bachelor's degrees in a specific field. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

Therefore, for the reasons related in the preceding discussion, the petitioner has failed to establish that the proposed position is a specialty occupation.

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.