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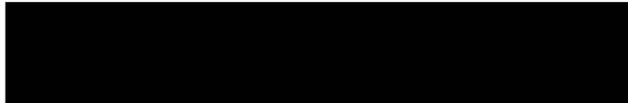
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FILE: SRC 06 001 53676 Office: TEXAS SERVICE CENTER Date: FEB 06 2007

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.

Robert P. Wiemann

Robert P. Wiemann, 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 sustained. The petition will be approved.

The petitioner is a legislative body that seeks to employ the beneficiary as a “Research Assistant II/Paralegal II.” 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 of her determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation. On appeal, the petitioner contends that the director erred in denying the petition, and that the proposed position in fact qualifies for classification as a specialty occupation.

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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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:

An 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 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 baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position.

According to the petitioner’s October 3, 2005 letter of support, the beneficiary would work as a research assistant with the petitioner’s finance team, under the supervision of the senior analysts on that team. He would perform a variety of research, statistical, and financial activities related to taxation and economic development incentive issues that come before the petitioner’s two houses. Such issues would require research related to incentives regarding personal or corporate income taxes, sales taxes, property taxes, and economic development incentives. The beneficiary would also prepare written fiscal analyses, fiscal notes, fiscal memoranda, reports for legislative committees, and responding to specific information requests from the petitioner’s members.

In her denial, the director looked to information from the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) regarding the duties and educational qualifications for paralegals. As noted by the director, such positions do not normally require the attainment of a bachelor’s degree (or its equivalent).

However, as noted by the petitioner on appeal, the proposed position is not that of a paralegal. The title of the proposed position, Research Assistant II/Paralegal II, was assigned by the petitioner’s House and Senate leadership and cannot be altered without special permission. “Research Assistant II” and “Paralegal II” are grouped together simply because they fall within the same salary pay grade.

In determining whether a proposed position qualifies as a specialty occupation, CIS 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. The proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration 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.

The petitioner has submitted detailed information regarding the details of the proposed position. These duties appear 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 relevant field. The petitioner has also submitted evidence regarding the educational background of its other research assistants, all of whom possess at minimum a bachelor’s degree in a relevant specialty. Most also possess a graduate degree.

The petitioner has submitted a detailed description of the duties of the proposed position, that, in combination with the 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 related field.

The AAO notes that the beneficiary earned a doctorate degree in philosophy, with a major in public administration, from North Carolina State University in 2005. He is therefore qualified to perform the duties of this specialty occupation.

The petitioner has established both that the position qualifies for classification as a specialty occupation and that the beneficiary is qualified to perform the duties of that specialty occupation. Accordingly, the petition will be approved.

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 sustained that burden.

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