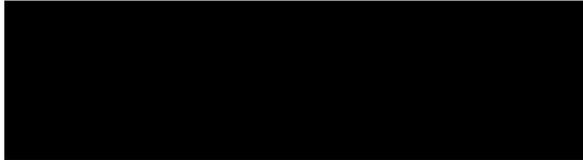


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02

MAR 13 2007

FILE: SRC 05 205 50980 Office: TEXAS SERVICE CENTER Date:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition. 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, with five employees and approximately \$350,000 in gross annual income. It seeks to employ the beneficiary as a foreign legal consultant. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 determining that the beneficiary must be licensed to practice law in the State of Florida and was not so licensed; and that the beneficiary lacked the appropriate certification as a foreign legal consultant in the State of Florida upon arrival in the United States; thus the beneficiary was not eligible to perform the duties of the specialty occupation.

The record of proceeding before the AAO contains: (1) the July 18, 2005 Form I-129 with supporting documentation; (2) the director's August 4, 2005 request for additional evidence (RFE); (3) the petitioner's October 5, 2005 response to the director's RFE; (4) the director's November 21, 2005 denial letter; and (5) the Form I-290B, noting that a separate brief or evidence would not be submitted. The AAO reviewed the record in its entirety before issuing its decision.

In a July 11, 2005 letter in support of the petition, the petitioner stated:

At this time, we wish to employ [the beneficiary] in the vital professional position of Foreign Legal Consultant, specializing in British civil and criminal law. In this capacity, [the beneficiary] will consult with the firm's current and potential clients on matters related to British law. Many of the firm's potential clients will pursue obtaining E-2 Treaty Investor visas, which require a substantial, active investment in the United States. [The beneficiary] will provide advice and guidance on a variety of foreign legal issues including money transfers, foreign banking transactions and investment advice, through the application of knowledge of foreign civil codes. Moreover, the Foreign Legal Analyst will provide expert legal and business guidance in evaluating and investment options.

[The beneficiary] will also interview clients on criminal matters to provide analysis on whether their any criminal violations they may have incurred may rise the level of denying them admission to the Untied States. [Sic.] Utilizing his knowledge of the field of British law, he will gather information on any arrests, charges, or convictions that may stand in the way of a client being admissible to the Untied States. He will analyze the law and provide reports [to the petitioner] so that the client can be advised of his options.

The Foreign Legal Consultant will also provide knowledge of market conditions in Great Britain, and assist in compiling and evaluating promotional campaigns and materials specifically for the expansion of the British marketing sector. He will work with [the petitioner] in the development of long range strategic planning for this lucrative market.

The record includes an evaluation of the beneficiary's foreign education and membership in the Higher Courts (Criminal Proceedings) Law Society and England and Wales, United Kingdom Law Society. The evaluator assessed the beneficiary's education as the equivalent of a minimum of a U.S. baccalaureate degree with specialization in legal studies and in reality a degree comparable to a U.S. *Juris Doctor* degree.

On August 4, 2005 the director requested further information regarding the specific nature of the proffered position. The director also noted the description suggested that the individual performing the duties of the proffered position would require a law license or certification as a foreign legal consultant and requested evidence that the beneficiary had the appropriate law license or State of Florida foreign legal consultant certification.

In an October 5, 2005 response, the petitioner stated: "A Foreign Legal Consultant must be admitted to practice law on whose legal system he will be providing advice;" "Law firms will typically utilize the services of an attorney admitted in another jurisdiction, including a foreign country, to render advice on complex legal issues;" and "[t]he American Bar Association and most states have determined that providing legal advice constitutes the practice of law." The petitioner reiterated that the foreign legal consultant would assist clients from the United Kingdom and would provide legal memoranda as to the issues and elements of British law to U.S. lawyers to enable the U.S. attorneys to properly advise clients.

The petitioner asserted that the Florida State Bar Association's certification and licensing of foreign legal consultants were established for those foreign legal consultants who would maintain an office in the State of Florida and render services; but that foreign legal consultants who functioned as consultants on the law of the country in which they are admitted and would be working with and under the supervision of a licensed attorney were not subject to the certification and licensing requirements. The petitioner added that when the principal attorneys are licensed, certification and licensure of the foreign legal consultant is a credentialing function and that the beneficiary in this instance meets the standards for certification and licensure in Florida and may, upon his admission to the U.S. apply for such credentialing.

On November 21, 2005, the director denied the petition. The director first determined that the duties of the proffered position qualified the position as a specialty occupation. The director determined, however, that the beneficiary would be giving legal advice to the petitioner's clients on United States immigration laws and that giving advice required the beneficiary to have the appropriate licensure. The director observed that the beneficiary was not licensed to provide legal advice upon arrival in the United States. The director further determined that providing clients with advice and legal services regarding the laws of Great Britain required the beneficiary's certification as a foreign legal consultant in the State of Florida. The director noted the petitioner's assertion that the beneficiary would be working under the supervision of a licensed attorney regarding the laws of Great Britain but found this statement contrary to the initial description of duties offered in support of the petition. The director also found that the record did not include evidence that the Florida State Bar allowed the duties as described to be performed by an individual without the proper licensure as an attorney or certification as a foreign legal consultant. The director concluded that as the record did not include evidence that the beneficiary had the appropriate certification to immediately engage in employment in the occupation, the petition must be denied.

On appeal, the petitioner asserts that the beneficiary will not be giving advice to clients on U.S. immigration laws but would be providing legal memoranda on issues and elements of British law for U.S. lawyers so that the U.S.

lawyers could properly advise clients. The petitioner contends that the Florida State Bar Association and the Florida Supreme Court do not require licensing of a foreign legal consultant but provides for a certification process so that the foreign legal consultants may have their foreign credentials legitimized and certified. The petitioner claims that this is a credentialing process, not a licensing process. The petitioner asserts further that the proffered position does not permit the beneficiary to maintain his own office in Florida and thus the proffered position falls outside the Florida definition of a foreign legal consultant. The petitioner attaches Rule 16-1.2 of the rules regulating the Florida Bar, Definitions of a Foreign Legal Consultant.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Preliminarily, the AAO observes that the petitioner has clarified that the beneficiary will be providing legal services regarding British law and will not be practicing U.S. law. Thus, the beneficiary is not required to obtain a Florida State Bar License. However, the AAO finds that it is the act of providing legal memoranda on issues and elements of British law that make the proffered position a specialty occupation; and that is the act of advising U.S. attorneys on the issues and elements of British law that require certification as a foreign legal consultant prior to engaging in this occupation. The State of Florida has provided a set of rules for those individuals who have been admitted to practice law in a foreign country, limiting those individuals to rendering legal services regarding the laws of the country in which the person is admitted to practice as an attorney. These rules have been put in place to prevent the unauthorized practice of law and to allow appropriate disciplinary measures, such as withdrawing certification, if the individual does not follow the applicable rules and regulations regarding the practice of law, including foreign law.

The pertinent Florida State Rules regarding a foreign legal consultant include:

RULE 16-1.1 PURPOSE

The purpose of this chapter is to permit a person who is admitted to practice in a foreign country as an attorney, counselor at law, or the equivalent to act as a foreign legal consultant in the state of Florida. This chapter authorizes an attorney licensed to practice law in 1 or more foreign countries to be certified by the Supreme Court of Florida, without examination, to render services in this state as a legal consultant regarding the laws of the country in which the attorney is admitted to practice.

RULE 16-1.2 DEFINITIONS

A foreign legal consultant is any person who:

- (a) has been admitted to practice in a foreign country as an attorney, counselor at law, or the equivalent for a period of not less than 5 of the 7 years immediately preceding the application for certification under this chapter;
- (b) has engaged in the practice of law of such foreign country for a period of not less than 5 of the 7 years immediately preceding the application for certification under this chapter and has remained in good standing as an attorney, counselor at law, or the equivalent throughout said period;
- (c) is admitted to practice in a foreign country whose professional disciplinary system for attorneys is generally consistent with that of The Florida Bar;
- (d) has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within 10 years immediately preceding the application for certification under this chapter and is not the subject of any such disciplinary proceeding or investigation pending at the date of application for certification under this chapter;
- (e) has not been denied admission to practice before the courts of any jurisdiction based upon character or fitness during the 15-year period preceding application for certification under this chapter;
- (f) has submitted, pursuant to requirements determined by the Supreme Court of Florida, an application for certification under this chapter and the appropriate fees;
- (g) agrees to abide by the applicable Rules Regulating The Florida Bar and submit to the jurisdiction of the Supreme Court of Florida for disciplinary purposes;
- (h) is over 26 years of age;
- (i) maintains an office in the state of Florida for the rendering of services as a foreign legal consultant; and
- (j) has satisfied, in all respects, the provisions of rule 16-1.4.

RULE 16-1.3 ACTIVITIES

- (a) Rendering Legal Advice.** A person certified as a foreign legal consultant under this chapter may render legal services in the state of Florida; provided, however, that such services shall:
- (1) be limited to those regarding the laws of the foreign country in which such person is admitted to practice as an attorney, counselor at law, or the equivalent;

- (2) not include any activity or any service constituting the practice of the laws of the United States, the state of Florida, or any other state, commonwealth, or territory of the United States or the District of Columbia including, but not limited to, the restrictions that such person shall not:
- (A) appear for another person as attorney in any court or before any magistrate or other judicial officer or before any federal, state, county, or municipal governmental agency, quasi-judicial, or quasi-governmental authority in the state of Florida, or prepare pleadings or any other papers in any action or proceedings brought in any such court, or before any such judicial officer, except as authorized in any rule of procedure relating to admission pro hac vice, or pursuant to administrative rule;
 - (B) prepare any deed, mortgage, assignment, discharge, lease, agreement of sale, or any other instrument affecting title to real property located in the United States, or personal property located in the United States, except where the instrument affecting title to such property is governed by the law of a jurisdiction in which the foreign legal consultant is admitted to practice as an attorney, counselor at law, or the equivalent;
 - (C) prepare any will or trust instrument affecting the disposition of any property located in the United States and owned by a resident thereof nor prepare any instrument relating to the administration of a decedent's estate in the United States;
 - (D) prepare any instrument with respect to the marital relations, rights, or duties of a resident of the United States or the custody or care of the children of such a resident;
 - (E) render professional legal advice on the law of the State of Florida, the United States, or any other state, subdivision, commonwealth, or territory of the United States, or the District of Columbia (whether rendered incident to the preparation of a legal instrument or otherwise); or
 - (F) render any legal services without utilizing a written retainer agreement that shall specify in bold type that the foreign legal consultant is not admitted to practice law in the state of Florida nor licensed to advise on the laws of the United States or any other state, commonwealth, territory, or the District of Columbia, unless so licensed, and that the practice of the foreign legal consultant is limited to the laws of the foreign country where such person is admitted to practice as an attorney, counselor at law, or the equivalent.

RULE 16-1.4 CERTIFICATION

- (a) Commencement of Permission to Perform Services.** Permission for a foreign legal consultant to render legal services under this chapter shall become effective upon the filing of an application and certification, with respect to an applicant, by the International Law Section of The Florida Bar, of the requirements of rules 16-1.2(a) through (j) and 16-1.3(a) and (b) herein.
- (b) Annual Sworn Statement.** A person certified under this chapter as a foreign legal consultant shall submit to The Florida Bar, on an annual basis, a sworn statement attesting to the foreign legal consultant's good standing as an attorney, counselor at law, or the equivalent in the foreign country in which such person is licensed to practice and shall also include with such statement an annual renewal fee equivalent to annual membership fees paid by members of The Florida Bar, in good standing, and such other evidence as The Florida Bar shall deem necessary to determine the continuing qualifications of the foreign legal consultant under this chapter.

The AAO disagrees that these rules have been established only so that foreign attorneys may have their foreign credentials legitimized. Rather, the State of Florida is regulating the practice of foreign law in its state and detailing the steps an individual who will be providing legal advice regarding foreign law must follow to provide these services. Although the foreign legal consultant in this matter is not maintaining a separate office, the petitioner is utilizing the individual in the proffered position to provide advice on British law. It is the act of providing the legal services described that makes this individual subject to the rules and certification requirements of a foreign legal consultant in Florida, whether or not the individual maintains a separate office. The petitioner has not offered evidence that the State of Florida allows the practice of foreign law in its State without the accompanying foreign legal consultant certificate. 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)). As the record does not contain evidence to the contrary, the beneficiary must obtain certification as detailed in the Florida Rules prior to qualifying for this specialty occupation and providing the described services. As the petitioner has not provided evidence that the beneficiary has obtained the appropriate certifications the beneficiary is not eligible to perform the duties of the specialty occupation.

For reasons related in the preceding discussion, the petitioner has not established that the beneficiary is qualified to perform the duties of the specialty occupation upon entry into the United States. Accordingly, the AAO will not disturb the director's denial of the petition. As always, 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 met that burden.

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