



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 04 2015**

PETITION RECEIPT #:

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 17-employee dental products wholesaler and distributor established in [REDACTED]. In order to employ the beneficiary in what it designates as a legal specialist position, the petitioner seeks 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 September 19, 2014, finding that the petitioner did not establish that the beneficiary possesses the appropriate license as required by the proffered position or that the beneficiary is exempt from the requirement. The petitioner subsequently filed an appeal.

The record of proceeding before this office contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) a Notice of Appeal or Motion (Form I-290B), a brief, and supporting documentation.

Upon review of the entire record of proceeding, we find that the evidence of record does not overcome the director's ground for denying this petition.¹ Accordingly, the appeal will be dismissed, and the petition will be denied.

I. FACTUAL AND PROCEDURAL HISTORY

The petitioner indicated on the Form I-129 and in supporting documentation that it seeks to employ the beneficiary in a position described as a "Legal Specialist" for 9 hours per week on a part-time basis. The Labor Condition Application (LCA) filed in support of the petition was certified for use with a job prospect within the "Lawyers" occupational classification, SOC (O*NET/OES) Code 23-1011, at a Level I (entry-level) wage.

In a letter dated March 31, 2014, the petitioner stated that "we have been in great need of legal special[ist] who can assist us with high level legal knowledge in business law, encompassing our corporate legal affairs, including governmental affairs, corporate legal documentation issues such as dealing with sales contracts or partnership agreements, corporate taxation, real estate finance problems, and securities regulations, etc." The petitioner further indicated that "[t]o protect the company's intellectual properties of patents and trademarks, the worker should have specific legal knowledge to solve any possible tort or fraud problems." The petitioner also stated that they are in need of "a professional who can provide our management the most recent international trade policies ever changing between the United States and other count[ries] where we have customers."

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The petitioner indicated that the beneficiary's specific duties were as follows:

- Assist management by means of corporate legal counseling in regard to corporate legal affairs with government, corporate legal documentation such as sales contracts or dealership contracts/partnership agreements, corporate taxation, real estate finance problems, and securities regulations, etc. 25%
- Study and summarize legal defenses to protect the company's intellectual property, patent, or trademark, then explain to CEO. 25%
- Draft, negotiate contracts with customers in US and other foreign countries as well as with vendors for raw material in USA. 20%
- Study and research international trade policy, specifically in transnational dental sales and goods between US and China, and assist management to apply them in multinational trade business. 15%
- Review, analyze legal issues of any breach of contracts; Evaluate remedies by breach of contracts, and explain and report to management. 10%
- Research, revise and rewrite company policies and procedures manual. 5%

[Verbatim.]

The petitioner also stated that the "nature of the specific duties of Legal Specialist in our company is so complex and specialized that the knowledge to perform the said duties can be attained by the educational course for the Master's Degree in Business Law or in equivalent field in minimum." The petitioner also stated that the "job duties of our Legal Specialist position are similar to those of Lawyer in nature." The petitioner submitted the Master of Law degree and Graduate Certificate in Business Law awarded to the beneficiary from the [REDACTED]

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 16, 2014. The director noted that the petitioner did not submit sufficient documentation of the beneficiary's qualifications. The director requested a copy of the beneficiary's attorney license or a temporary license, interim permit or other authorization issued by the agency that authorized the beneficiary to practice the profession. The RFE also stated that "if the state where the beneficiary will work allows an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation, provide evidence of such and a copy of the senior or supervisor's license to practice as a member of the profession."

In response, the petitioner submitted a letter from [REDACTED] Attorney at Law, dated August 5, 2014. The letter stated that "this office is legal counsel for [the petitioner]." Mr. [REDACTED] also stated that the beneficiary has "provided assistance to our office under my supervision in the areas of legal research and analysis, preparation of memorandum, including memorandums of points and authorities, assisting in client interviews, negotiations and the drafting of legal documents." Mr.

also provided a copy of his license from the State Bar of California.

The director denied the petition and noted that the petitioner did not provide any evidence to show that the State of California allows the beneficiary to work as a Legal Specialist without a license.

On appeal, the petitioner cites the California Business and Professions Code section 6125 that states “[n]o person shall practice law in this state unless he is an active member of the State Bar.” The petitioner also cites case law and the ABA Model Code of Professional Responsibility. The petitioner also states that “as such practice law means applying rules of law to facts for others,” and “in this particular case, the beneficiary will work for the petitioner, her employer, and under the supervision of corporate law.” The petitioner also states that the beneficiary “will not apply rules of law for anybody else besides her employer.”

II. BENEFICIARY’S QUALIFICATIONS

The issue is whether the petitioner has provided sufficient evidence to establish that the beneficiary possesses the requisite license for the proffered position or that the beneficiary is exempt from the requirement.

A. Law

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (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 are 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.

In addition, 8 C.F.R. § 214.2(h)(4)(v)(A) states:

General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

B. Analysis

In the instant matter, the petitioner claims that the proffered position is a "Legal Specialist." As mentioned, the petitioner filed the LCA for the occupational classification "Lawyers" – SOC (ONET/OES Code) 23-1011. Further, in the letter of support dated March 31, 2014, the petitioner stated that the "job duties of our Legal Specialist position are similar to those of Lawyer in nature."

To determine the licensure requirement for the proffered position, we turn to the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*. We recognize the *Handbook* as an authoritative source on the duties and educational/license requirements of the wide variety of occupations that it addresses.² The subchapter of the *Handbook* entitled "How to Become a Lawyer" states the following about this occupational category:

² All of our references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

Licenses

Becoming licensed as a lawyer is called being "admitted to the bar" and licensing exams are called "bar exams."

To practice law in any state, a person must be admitted to its bar under rules established by the jurisdiction's highest court. The requirements vary by individual states and jurisdictions. For more details on individual state and jurisdiction requirements, visit the National Conference of Bar Examiners.

Most states require that applicants graduate from an ABA-accredited law school, pass one or more written bar exams, and be found by an admitting board to have the character to represent and advise others. Lawyers who want to practice in more than one state must often take separate bar exams in each state.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Lawyers, on the Internet at <http://www.bls.gov/ooh/legal/lawyers.htm#tab-4> (last visited April 29, 2015).

According to the *Handbook*, "[t]o practice law in any state, a person must be admitted to its bar under rules established by the jurisdiction's highest court." We further note that as mentioned by the petitioner, the California Business and Professions Code Section 6125 states that "[n]o person shall practice law in California unless the person is an active member of the State Bar."

As previously mentioned, the petitioner indicated that the classification "Lawyer" is the most appropriate occupational category for the proffered position. Further, the petitioner filed the supporting LCA for the occupational classification "Lawyers" – SOC (ONET/OES Code) 23-1011.

However, on appeal, the petitioner claims that it "used lawyer's salary guideline as a reference for the salary of legal specialist position so that the employment would not affect or detriment U.S. labor market," but "it does not mean [that] the position offered is for a practicing lawyer." The petitioner further asserts that a license to practice law is not required because "the beneficiary's work[sic] with a manufacturer, wholesaler/Distributor in dental products do[es] not constitute practice of law." The petitioner claims that California courts define the practice of law as "the doing or performing services in a court of justice in any matter, depending therein, throughout its various stages and in conformity with the adopted rules of procedure." The petitioner states that the beneficiary "will perform all her duties on the business premises of the employer and will not go to court," and "will not apply rules of law for anybody else besides her employer."

Contrary to the petitioner's claim, we find that the courts stated that the definition of the term "practice of law" includes "preparation of legal instruments and contracts by which legal rights are secured although such matter or may not be depending in a court." *Birbrower, Montalbano, Condon & Frank, P.C., v. Superior Court*, 17 Cal.4th 119, 128 (Cal. 1998)(quoting *People ex. Rel. Lawyers Institute of San Diego v. Merchants' Protective Corp.*, 189 Cal. 531, 535 (Cal. 1922)). Therefore,

the term "practice of law" is not limited to matters in court, but includes legal advice and counsel, and preparation of legal instruments and contracts.

In this case, the petitioner had stated in its support letter dated March 31, 2014 that the beneficiary will "assist management by means of corporate legal counseling," "study and summarize legal defenses to protect the company's intellectual property, patent, or trademark," and "draft, negotiate contracts with customers in U[.]S[.] and other foreign countries." Such duties constitute the definition of "practice of law," which includes "legal advice and counsel" and "preparation of legal instruments and contracts," and require that the beneficiary is an active member of the state bar in accordance to the California Business and Professions Code Section 6125.

We note that 8 C.F.R. § 214.2(h)(4)(v)(C) offers an exemption from the licensure requirements under certain circumstances; however, the petitioner did not establish that the beneficiary meets the criteria for an exemption. Specifically, 8 C.F.R. § 214.2(h)(4)(v)(C) states:

In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

In the support letter filed with the Form I-129, the petitioner did not indicate that the beneficiary will be supervised by a licensed attorney. In response to the RFE, the petitioner submitted a letter from Mr. [REDACTED] who claimed that the beneficiary has been working under his supervision. However, the petitioner did not submit documentary evidence to substantiate Mr. [REDACTED] claim of supervision of the beneficiary. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Further, the petitioner did not submit evidence to establish that the State of California allows individuals to fully practice as a lawyer under the supervision of licensed lawyer. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

Therefore, the petitioner did not establish that the beneficiary could fully perform the duties of the occupation under supervision, and qualifies for an exemption from the licensure requirement.

III. CONCLUSION AND ORDER

For the reasons discussed above, we conclude that the evidence of record does not establish that beneficiary is qualified to perform the duties of the proffered position.



The petition will be denied and the appeal dismissed for the above stated reasons,³ with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

³ As the grounds discussed above preclude approval of the petition, we will not address additional issues and deficiencies that we observe in the record of proceeding.