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U.S. Citizenship and Immigration Services

[redacted]

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FILE: SRC 03 131 50020 Office: TEXAS SERVICE CENTER Date: JUN 09 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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.

Mari Johnson

for 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 dismissed. The petition will be denied.

The petitioner is a corporation engaged in the international security business. In order to employ the beneficiary in a position which the petitioner denominated "secretary" on the Form I-129, the petitioner 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 that the petitioner had not established that the proffered position was a specialty occupation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A). A key element of the director's decision was her assessment that the petitioner proffered a legal secretary position.

On appeal, the petitioner contends that "secretary" was used as the job title, in accordance with Spanish usage, to mean "someone in an ADVISORY/Consulting position who requires a college degree in a specialized area of study" (emphasis in the original), and that, therefore, the director based her decision on a misunderstanding of the nature of the proffered position.

In reaching its decision, the AAO considered the entire record of proceeding, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, as annotated by the petitioner's director, and the letter submitted on appeal by the petitioner's director.

Upon review and consideration of all of the evidence of record, including all the submissions by counsel and the petitioner from the filing of the Form I-129 through this appeal, the AAO has determined that the director's decision to deny the petition was correct. The record does not present an evidentiary basis for classifying the proffered position as a specialty occupation in accordance with any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The matters presented on appeal have not remedied this lack of evidence.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

According to the petitioner's Form I-129, the petitioner was proffering a position which was entitled secretary and which would be "in charge of the international customs security evation [sic] and fraud investigation division."

The letter of support that the petitioner's president submitted with the Form I-129 indicated that the petitioner proffered the position in question to "provide consulting services to its international clients" by hiring "a professional to fill this position in the area of International Law, specializing in international taxation consulting services and tax evasion fraud investigations, as well as tax payment overdeductions for different international revenue tariff payments." The letter also noted that the position requires someone who can speak English, French, and German. The letter also stated,

> It should be borne in mind that he is a licensed ATTORNEY and holds graduate degrees on international law from his country of origin and the U[.]S[.]; moreover, he became certified in the required languages, being experienced in international legal studies.

The RFE put the petitioner on notice that it had not provided sufficient evidence upon which CIS could determine whether the proffered position was a specialty occupation. This is clear from the RFE's statement to the effect that the petitioner had not provided sufficient evidence as to why CIS should not treat the proffered position as an office-assistance type of secretary. It is also clear from the opportunity that the RFE afforded the petitioner to "explain how an Administrative Assistant meets the definition of specialty occupation," and to "[s]ubmit a detailed account of the exact job duties the beneficiary will perform as Secretary."

The petitioner's response to the RFE was inadequate. Only the following two subparagraphs of the letter of reply from the petitioner's president were relevant to the specialty occupation issue. They added no material information about the duties of the proffered position:

3. The meaning of the word Secretary is not the same in Spanish as it is in English; the meaning should be understood as "Secretary of", making this position "The secretary of the International Department of Customs Services."

4. Regarding the qualifications, it is clear that by the above explanation on point 3 [the above paragraph] that this position requires the level of knowledge and expertise provided in the original petition.

CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). The purpose of an RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8).

The petitioner was put on notice that it could not expect a favorable adjudication of the petition without a "detailed account of the exact duties the beneficiary will perform as a Secretary," and the petitioner was given a reasonable opportunity to provide that evidence for the record before the visa petition was adjudicated. As the petitioner failed to submit the requested evidence in response to a clearly [redacted] will not now consider for any purpose any evidence about those duties that the petitioner has chosen to submit on appea[redacted] The appeal will be adjudicated based on the record of proceeding as it was before the director.

The criterion at 8 C.F.R. §214.2(h)(4)(iii)(A)(*1*) is satisfied where the evidence establishes that a baccalaureate or higher degree, or the equivalent, in a specific specialty is the normal minimum requirement for entry into the particular position. The evidence of record here does not reach this threshold.

The AAO finds that the evidence before the director about the proposed duties was too generally stated, vague, and lacking in detail to support a determination that the proposed duties comprised a position which normally requires at least a baccalaureate or higher degree, or the equivalent, in a specific specialty.

Next, the petitioner has not presented evidence that would qualify the proffered position under either of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The record contains no evidence to satisfy the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) by establishing that a specific-specialty degree requirement is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals [redacted]

In light of the lack of specificity about the tasks involved in the performance of the proffered position, it is not possible to accurately align the position with an occupation described in the *Handbook*. Also, there are no submissions from individuals or other firms involved in the hiring of development assistants. The AAO also found that the evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*), which provides that "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." The general information which the record contains about the proposed position is not sufficient to show such complexity or uniqueness.

The petitioner, a relatively new business concern that appears to be proffering this position for the first time, did not present evidence to meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) – the employer normally requires a degree or its equivalent for the position.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*4*) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The record does not describe the proposed duties in sufficient detail for the AAO to accurately determine how specialized and complex they may be.

Aside from the director's decision, the types of consultation that the proffered position may involve raises the issue of licensure.

There are two grounds for concern about whether the proffered position may involve the practice of law.[1] One is the petitioner's references, especially on appeal, to legal areas, such as international agreements and trade law, in which the beneficiary would apparently be involved in some advisory capacity not clearly detailed in the record. The other is the petitioner's pointed references to the beneficiary's legal education and his status as a "licensed ATTORNEY" (emphasis in the original, at the letter of support filed with the Form I-129). If, in fact, the proffered position involves dispensing legal advice, then the petition may not be approved for the additional reason that the record lacks evidence that the petitioner is licensed to practice law in Florida, the state where the petitioner does business.[2]

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[1] Because the practice of law requires a license from the appropriate state, a petitioner seeking to employ a beneficiary to practice law must establish that the beneficiary possesses such license. Section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A), 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." Pursuant to 8 C.F.R. § 214.2(h)(4)(v)(A), 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.

[2] As presented at the [redacted] s a person who is licensed as an attorney in a foreign country to provide advice "regarding the laws of the country in which the attorney is admitted to practice," provided that the person is certified as a foreign legal consultant in accordance with that Chapter.

Because the petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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.