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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC-02-044-53497 Office: Vermont Service Center Date: JAN 22 2003

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an import/export firm employing one individual and five contractors, with a gross annual income of $420,000. It seeks to employ the beneficiary as a part-time in-house counsel for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a statement.

Section 214(i)(1) of 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.

8 C.F.R. 214.2(h)(4)(ii) further defines the term "specialty occupation" 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.

The director denied the petition because the record failed to establish that the duties of the offered position required the services of an individual with a bachelor's degree in a specific specialty.

On appeal, counsel argues that the position of in-house counsel is a specific specialty requiring at least a baccalaureate degree and that the beneficiary is equipped to perform the duties of a specialty occupation in that she has the equivalent of a U.S. law degree from Angola.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

> Advises corporation regarding legal rights, obligations and privileges in international business transactions. Researches U.S. and foreign law to ensure compliance with import/export rules and regulations. Formulates and coordinates procurement proposals. Negotiates and analyses contracts to detect ambiguities, inaccurate statements, omission of essential terms, and conflict with possible legal prohibition. Evaluates and monitors contract performance to determine necessity for amendments, and compliance to contractual obligations. Settles disputes arising from import/export contracts.

In its response to the Service's Request for Evidence, counsel indicated that the petitioner exported goods to private companies and the government of Angola. According to counsel, the petitioner has experienced difficulties enforcing contractual rights in its dealings with Angola due to differences in legal systems between the U.S. and Angola. In addition, counsel noted that the petitioner could not afford to hire a law firm to handle all of its contractual and commercial matters. However, neither counsel nor the petitioner has shown why it could not have simply retained the services of the attorney of record on an as-needed basis.

Regarding the beneficiary's actual functions on behalf of the petitioner, counsel specified that the beneficiary would oversee the petitioner's dealings with Gemini Holding, an Angolan corporation with whom the petitioner has entered into a contractual commercial agreement. Counsel also indicated that the beneficiary would devote approximately 8 hours a week to reviewing and negotiating the terms of all contracts resulting from the contractual agreement between the petitioner and Gemini Holding. The beneficiary would also spend about 6 hours a week responding "to all claims of warranty, breach of contract, nonperformance of contract, tort liabilities, etc."

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

Counsel argues, on appeal, that the definition of "house counsel" provided in the Occupational Outlook Handbook is inadequate and overly restrictive. Instead, counsel refers the Service to the definition of "Lawyer, Corporation" as set forth in the Dictionary of Occupational Titles, which indicates that a corporate counsel not only advises the corporation as to the "advisability of defending or prosecuting [a] lawsuit," but, in addition, "may act as [an] agent of [a] corporation in various transactions."

A reference in the Department of Labor's Dictionary of Occupational Titles (DOT), standing alone, is not enough to establish that an occupation is a specialty occupation. The Associate Commissioner does not consider the DOT a persuasive source of information regarding whether a particular job 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. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law.

The Department of Labor has replaced the DOT with the Occupational Information Network (O*Net). Both the DOT and O*Net provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the DOL in the various editions of the Occupational Outlook Handbook (Handbook). The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This

is because it provides specific and detailed information regarding the educational and other requirements for occupations, along with a more *comprehensive* description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation.

In its Occupational Outlook Handbook (Handbook), 2002-2003 edition at page 210, the Department of Labor (DOL) describes the duties of "house counsel" as follows:

> Lawyers are sometimes employed full time by a single client. If the client is a corporation, the lawyer is known as "house counsel," and usually advises the company concerning legal issues related to its business activities. These issues might involve patents, government regulations, contracts with other companies, property interests, or collective bargaining agreements with unions.

These duties do not conform to the functions performed by the beneficiary. Rather, the beneficiary would be assigned to handling specific, day-to-day marketing and commercial issues arising from the petitioner's business transactions involving one particular concern -- Gemini Holding -- and resolving ongoing difficulties arising from differences in legal systems between the U.S. and Angola.

These duties assigned to the beneficiary would appear to fall more appropriately within the scope of those normally performed by contract/purchasing specialists. As with the beneficiary, these individuals are involved in formulating and coordinating procurement arrangements, negotiation and analyzing of contracts to detect flaws, omissions, ambiguities, and noncompliance with existing statutes, and settling contractual disputes. According to page 82 of the Handbook, there is no generalized requirement on the part of employers that purchasing agents or specialists hold at least a baccalaureate in a specific specialty.

By contrast, the responsibilities of an in-house counsel, as enumerated in the Handbook, would normally involve proffering advice on a broad range of legal issues affecting the employer corporation or firm. It should also be noted in this connection that the petitioner has provided a copy of a ruling from the Committee of the Virginia State Bar indicating that a non-lawyer is not prohibited from providing legal advice or preparing legal documents for his/her regular employer. According to this ruling, the beneficiary in this instance would not only be exempt from having to acquire membership in the state bar but would not even be required to hold a law degree. Thus, the petitioner has failed to

show that the duties involved in the proffered position would require a baccalaureate degree in legal studies or a related field.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as common law studies, for the offered position. Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals with a bachelor's degree in a specific specialty. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties 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 in a specific specialty.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.