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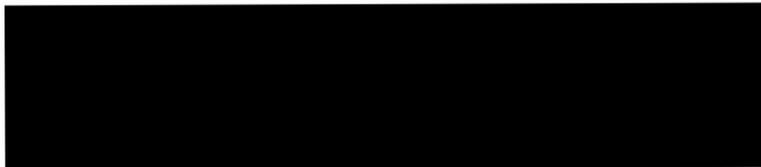
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FILE: WAC 07 097 50301 Office: CALIFORNIA SERVICE CENTER Date: JUN 23 2008

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:



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 of the service center 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 real estate development business that seeks to employ the beneficiary as a paralegal and legal assistant. 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 because the proffered position is not 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 evidence (RFE); (3) counsel's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

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) consistently interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000).

The petitioner seeks the beneficiary’s services as a paralegal and legal assistant. Evidence of the beneficiary’s duties includes: the petitioner’s February 5, 2007 letter in support of the petition and the petitioner’s June 15, 2007 affidavit in response to the director’s RFE. As stated by the petitioner, the proposed duties are as follows:

Analyze, research and draft legal documents; complete information, forms, and draft applications for real estate entitlement rights; and conduct studies pertaining to the development of new laws and regulations to meet relief and benefits in real estate development projects.

In his June 15, 2007 affidavit submitted in response to the RFE, the petitioner’s president further described the proposed duties as the beneficiary assisting him in the following:

Conduct of project due diligence, title search and analysis and plan reviews; creation of project pro formas used to evaluate project visibility;

Creation and editing of various real estate related transactional documents;

- Interaction with third party professionals (engineers, scientists, title analysts, other lawyers, lenders and financial analysts) vendors, public officials and public agency administrators;
- Ordering various corporate and public record searches; and

- Administrative duties including billing, record keeping, project record keeping, account payables, and account receivables.

The director found that the proposed paralegal/legal assistant duties do not require a bachelor's degree. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the director ignored the evidence, which includes an affidavit from the petitioner, job advertisements, and industry letters. Counsel also asserts that the proffered position meets "more or less" all criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that the petitioner's former associate who performed the proposed duties was an attorney and that the beneficiary previously worked at a law firm on an H-1B visa. As supporting documentation, counsel submits: a copy of the previously submitted affidavit from the petitioner's president; a DOL printout on paralegals and legal assistants; Internet job advertisements; copies of two previously submitted industry letters; and documents related to real estate development.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *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." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not find that the proffered position is a specialty occupation. No evidence in the *Handbook*, 2008-09 edition, indicates that a baccalaureate or higher degree, or its equivalent, is required for a legal assistant/paralegal job. The most common way to become a legal assistant/paralegal is through a community college paralegal program that leads to an associate's degree. It is noted that employer preference is not synonymous with the normally required language of the regulation. Of further note, although information on the petition reflects that the petitioner was established in 2006, has two employees, and a proposed gross annual income of \$1-2 million, the record contains no evidence in support of these claims such as quarterly wage reports and federal tax returns. Going on record without supporting documentary evidence is not sufficient for the purpose 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)).

Accordingly, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(I).

Regarding parallel positions in the petitioner's industry, counsel submits Internet job postings for paralegals. Although most of the listings stipulate the requirement of a bachelor's degree, the majority of them do not stipulate a bachelor's degree in a specific specialty. It is also noted that the job advertisement from Liberty Investment Properties, Inc. stipulates the requirement of an associate's or bachelor's degree. In addition, the listings do not indicate that the businesses publishing the advertisements are similar to the petitioner in size, number of employees, or level of revenue. Thus, the advertisements are insufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

The AAO acknowledges the June 12, 2007 letter from the president of another realty and development company, and the undated letter from the president of a recruiting business that recruits employees for law firms and corporate legal departments, who both assert that they hire paralegals with a bachelor's degree because of the complex nature of the duties, which include drafting and maintaining transactional documents and handling the review of title and survey matters. The writers, however, do not provide a definitive statement of duties associated with the proposed position that substantiates that the incumbent in the position must possess a bachelor's degree in a specific discipline. Moreover, the writers do not provide any evidence in support of their assertion or rely on industry surveys, data or other documentation to reach the conclusion that a paralegal position requires a bachelor's degree in a field related to the specialty. 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. at 165. The *Handbook* is a compilation of results of nationwide industry questionnaires, surveys and personal interviews by the DOL, and indicates that there is no specific degree requirement for entry into the field. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Counsel states that "the beneficiary was working on H-1B status in a law firm and was assigned most of the Petitioner company's work," suggesting that CIS has already determined that the proffered position is a specialty occupation since CIS has approved another, similar petition in the past. This record of proceeding, however, does not contain all of the supporting evidence submitted to CIS in the prior case. In the absence of all of the corroborating evidence contained in other record of proceeding, the information submitted by counsel is not sufficient to enable the AAO to determine whether the position offered in the prior case was similar to the position in the instant petition. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals

that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).)

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment as a paralegal and legal assistant. Moreover, the evidence of record about the particular position that is the subject of this petition does not establish how aspects of the position, alone or in combination, make it so unique or complex that it can be performed only by a person with a degree in a specific specialty. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to 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. On appeal, counsel states that the petitioner’s former associate attorney used to perform the proposed duties, which clearly evidences that the petitioner requires a degree or its equivalent for the proffered position. In this matter, the record does not contain evidence of the former associate attorney’s employment with the petitioner or of the former associate attorney’s educational background. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, the AAO observes that the petitioner’s desire to employ an individual with a bachelor’s degree or equivalent does not establish that the position is a specialty occupation. The critical element is not the title of the position or an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results. If CIS were limited to reviewing a petitioner’s self-imposed employment requirements, then any alien with a bachelor’s degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Accordingly, the AAO finds that the record does not establish the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) – the nature of the specific 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.

On appeal, counsel states that the petitioner’s four projects for the development of residential units, as discussed by the petitioner’s president in his affidavit, all require extensive research, analysis, and discussion with various departments and the filing of forms. In his affidavit, the petitioner’s president also describes four major real estate developments and asserts that the proposed paralegal/legal assistant duties “are somewhat

complicated and require a person with experience and a person that has completed and obtained a college degree and has pursued either paralegal training or some form of post graduate training.” The petitioner, however, has not established that the duties performed exceed in scope, specialization, or complexity those usually performed by paralegals/legal assistants, an occupational category that does not normally require a baccalaureate or higher degree in a specific specialty. Further, as indicated earlier in this decision, the petitioner’s unsupported claims regarding the basic information of its business do not establish a requirement for the level of knowledge requisite for this criterion.

Upon review of the totality of the record, the record fails to reveal sufficient evidence that the offered position requires a bachelor's degree, or its equivalent, in a specific discipline. 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.

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