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U.S. Citizenship
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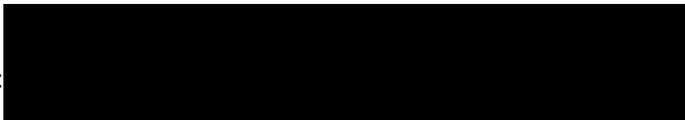


DI

FILE: EAC 02 278 52532 Office: VERMONT SERVICE CENTER

Date: **JAN 05 2005**

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, 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 law firm that seeks to employ the beneficiary as a paralegal. 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 because the proffered position does not qualify as a specialty occupation. On appeal, counsel states that the offered position qualifies as a specialty occupation and submits additional evidence.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

[A]n 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 are 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.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a paralegal. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to the evidence the beneficiary would: liaise with existing and potential firm clients and give instructions for the proper course of action for services required; communicate with local and international individual and corporate firm clients; prepare articles of incorporation for businesses; assist with preparation of business plans, leases, and employment contracts; review financial documentation and communicate with potential investors/businesses; monitor changes in United States immigration rules, regulations and policies; conduct legal and factual research pertaining to individual or multiple cases utilizing law sources such as statutes, recorded judicial decisions, legal articles, treaties, constitutions, and legal codes; prepare and compile legal documentation; instruct and supervise junior case coordinators with regard to standard business and industry operating procedures and with regard to all employment related immigration files; train new legal assistance staff in the above-referenced matters; monitor client files and records; and maintain legal volumes and ensure all records are up to date and all deadlines are kept. The petitioner requires a minimum of a bachelor’s degree for entry into the proffered position, but does not require a degree in any particular specialty.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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. Min. 1999) (quoting *Hird/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are those noted for paralegals and are described in the *Handbook* as follows:

While lawyers assume ultimate responsibility for legal work, they often delegate many of their tasks to paralegals. In fact, paralegals-also called legal assistants- continue to assume a growing range of tasks in the Nation's legal offices and perform many of the same tasks as lawyers. Nevertheless, they are still explicitly prohibited from carrying out duties which are considered to be the practice of law, such as setting legal fees, giving legal advice, and presenting cases in court.

One of a paralegal's most important tasks is helping lawyers prepare for closings, hearings, trials, and corporate meetings. Paralegals investigate the facts of cases and ensure that all relevant information is considered. They also identify appropriate laws, judicial decisions, legal articles, and other materials that are relevant to assigned cases. After they analyze and organize the information, paralegals may prepare written reports that attorneys use in determining how cases should be handled. Should attorneys decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments, draft pleadings and motions to be filed with the court, obtain affidavits, and assist attorneys during trials. Paralegals also organize and track files of all important case documents and make them available and easily accessible to attorneys.

In addition to this preparatory work, paralegals also perform a number of other vital functions. For example, they help draft contracts, mortgages, separation agreements, and trust instruments. They also may assist in preparing tax returns and planning estates. Some paralegals coordinate the activities of other law office employees and maintain financial office records. Various additional tasks may differ, depending on the employer.

The *Handbook* notes that there are several ways to become a paralegal, and that employers usually require formal paralegal training through an associate/bachelor's degree, or certification programs. Increasingly, employers prefer graduates of four-year paralegal programs, or college graduates with paralegal certification. Other employers, however, prefer to train college graduates with no experience, or to promote experienced legal secretaries. It is, therefore, apparent that a baccalaureate or higher degree, or its equivalent, is not normally the minimum requirement for entry into the proffered position. Indeed, the *2001 Paralegal Compensation and Benefits Report* published by the National Federation of Paralegal Associations, Inc., notes that in the petitioner's geographic region, only 50.7 percent of paralegals hold a bachelor's degree or higher. The petitioner has failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion, the petitioner submitted numerous job advertisements for paralegal positions in the United States. The vast majority of advertisements indicated that bachelor's degrees were required for the positions, although some only preferred a degree or paralegal certification. The advertisements requiring degrees, however, did not require a degree in any particular specialty. Degrees in any number of disciplines would suffice. The petitioner has not, therefore, established that a degree in a specific specialty is common to the industry in parallel positions among similar organizations. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner asserts that it normally requires a degree for the proffered position and has therefore established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). In support of this assertion the petitioner lists five paralegals that it presently employs and provides copies of their respective degrees. The degrees are in a number of disciplines including: English/History/Literature; law; Bachelor of Science degree (discipline unspecified); and two Bachelor of Arts degrees in general studies. It is clear, therefore, that the petitioner does not require a degree in a specific specialty for entry into the proffered position. A degree in a wide range of disciplines will suffice. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties are routine for paralegal positions in the industry and routinely performed by individuals with less than a baccalaureate level education, and by individuals with degrees in a wide range of educational disciplines. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner makes reference to the *Dictionary of Occupational Titles (DOT)* and the SVP rating for the offered position. The petitioner's assertions regarding the DOT's SVP rating for the offered position are unpersuasive. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

Finally, counsel's reference to previously approved petitions for other paralegal positions will not sustain its burden of proof in these proceedings. This record of proceeding does not contain the entire record of proceedings in the petitions referred to by counsel. Accordingly, no comparison of the positions can be made. 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, the AAO is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as a paralegal. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a

specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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