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U.S. Citizenship
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FILE: WAC 04 005 54471 Office: CALIFORNIA SERVICE CENTER [REDACTED] Date: JUN 16 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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.

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 specializing in immigration law that seeks to employ the beneficiary as an immigration 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, the petitioner submits a brief stating that the offered position qualifies as a specialty occupation.

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 an immigration 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:

- Review the facts of a case, and relevant laws to prepare cases;
- Gather, research and analyze relevant law sources, including statutes, regulations, decisions, codes, legal articles, and other research data as needed;
- Prepare legal documents, including forms, petitions, applications, briefs, and appeals for review, approval, and use by attorneys and, if satisfactory, for filing with the Bureau of Citizenship and Immigration Services, the U.S. Department of State, the U.S. Department of Labor, and other government agencies pertaining to the employment of foreign nationals;
- Draft legal arguments and gather support evidence;
- Identify legal issues pertaining to cases and discuss them with supervising attorneys;
- Work with a large volume of cases on behalf of institutional and corporate clientele;
- Manage caseload using sophisticated case management software; and
- Keep abreast of recent developments, new laws and policies pertaining to immigration and naturalization issues.

The petitioner requires a minimum of a bachelor’s degree for entry into the proffered position, but does not require a degree in any specific 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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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 in a specific specialty, or its equivalent, is not normally the minimum requirement for entry into the proffered position. 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, along with statements from other attorneys/law firms. The job advertisements indicated that bachelor’s degrees were required for the positions, but did not establish that the required degree need be in any particular specialty. The same was true for all

opinion statements submitted by the petitioner. Some of the statements indicated only that a degree was required, with no requirement of a degree in any specific field of study. Others indicated that they employed paralegals with degrees in the following fields: business administration; the sciences; economics; international relations and other humanities fields; international commerce; political science; a language; international studies; history; philosophy/pre-law; paralegal studies; journalism; English; environmental science; sociology; and international politics. The evidence submitted does not establish the referenced regulatory criterion, but, in fact, establishes that a degree, in a specific specialty, is not 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 submitted evidence of current immigration paralegals/legal assistants who possess a baccalaureate level education. The evidence submitted does not indicate that the petitioner normally requires a degree in a specific specialty for entry into the offered position as the listed degrees are in diverse fields. The petitioner did not provide proof of the degrees listed for its employees. Simply going on the 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). The petitioner has failed to establish that it normally requires a degree, in a specific specialty, for entry into the offered position. Further, 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 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.¹ 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 menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has not been established.

Finally, 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).

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

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.