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U.S. Department of Justice

Immigration and Naturalization Service

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



**PUBLIC COPY**

File: EAC 00 171 50657 Office: Vermont Service Center Date:

**AUG 31 2001**

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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, Acting 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 international law firm which seeks to employ the beneficiary as a paralegal for a period of three years. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel argues that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

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), provides in part for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately

engaged in that specialty in the state of intended employment; or

4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary attained a Bachelor of Science degree in 1996 in sociology and criminal justice from Chestnut Hill College in Pennsylvania. The record indicate that she has attained over three years of experience as a legal assistant while working with another law firm and that she is fluent in Swedish and Turkish as well as in English.

The term "specialty occupation" is 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.

The duties of the offered position are described as follows:

The duties of the position include gathering facts necessary to support petitions and applications; applying those facts, and understanding the legal issues involved in such petition or application; drafting letters, affidavits, statements and forms for filing with government agencies; contacting clients, including doctors, Ph.D. researchers, managers, business people and other professionals regarding matters in their cases; speaking with professionals in scientific and technical fields to gain an understanding of their discipline sufficient to draft documents on their behalf, interpreting legal documents relating to immigration filings; researching, compiling and analyzing documentation for immigrant or nonimmigrant visa petitions, asylum applications and waiver cases; and coordinating with foreign student advisors, human resources personnel, U.S. government agencies and U.S. consular posts abroad in preparation and filing of immigration cases.

Counsel indicates that since the founding of the firm's "Immigration Group," the company has hired sixteen paralegals including the beneficiary, and that all of them have at least a bachelor's degree or the equivalent. Counsel has not submitted evidence to support that assertion. It is noted that the bachelor's degrees of the sixteen person paralegal staff cited by counsel were in a wide range of fields including languages (Russian, German, French and Spanish), education, international relations, economics, and political science.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. In addition, the petitioner has not shown that similar firms require the services of such individuals in parallel positions.

In these proceedings, the duties of the position are dispositive and not the job title. The offered position combines the duties of a paralegal with those of an office clerk. In its Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 146-147, the Department of Labor does not state that a baccalaureate or higher degree in a specialized area is required for employment as a paralegal. Some paralegal hold baccalaureate degrees in paralegal studies or other fields. Others hold certificates. The majority hold associate (two-year) degrees.

The Handbook at pages 313 also lists no requirement of a baccalaureate degree in a specialized area for employment as an office clerk. Many employers require a high school diploma, and some require typing, basic computer skills, and other general office skills. There is no indication that a degree in a specific field of study is required. It is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Counsel argues that this petition should be approved because the beneficiary is already the recipient of an approved H-1B petition filed by another law firm. This Service is not required to approve applications or petitions where eligibility has not been demonstrated.

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.