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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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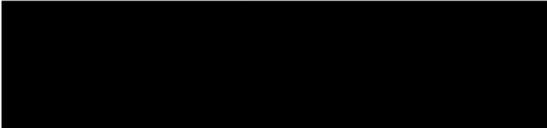
File: EAC-00-269-54481 Office: Vermont Service Center

Date: APR 29 2002

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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

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, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner provides legal services for senior citizens. It has ten employees and a gross annual income of \$350,214. It seeks to employ the beneficiary as a legal services coordinator and translator for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) 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 duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. On appeal, counsel states, in part, that the proposed duties are so complex that they can be performed only by an individual with college training in language/linguistics or an individual with a law degree. Counsel also states that the petitioner normally requires at least a baccalaureate degree and such requirement is an industry standard. Counsel further states that the proffered position is similar to that of a technical writer which is a specialty occupation.

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:

- 1) Coordination of provision of legal services to all Hispanic and Spanish-speaking clients, including assessments of needs and development of services;

- 2) Translation in full technical and legal language of documents such as organization's brochure and pamphlets, description of various legal aid products directed to the Hispanic community and community legal educational materials from English into Spanish language;
- 3) Coordinating outreach and community legal education services to Hispanic elders and community organizations, including identification of needs, scheduling, and presentation; Coordinating Hispanic elderly legal clinical program, including program assessment, program development, and record keeping;
- 4) Acting as liaison to the Hispanic community and public interest organizations, including other legal services providers; Conducting community legal education and professional training workshops as scheduled at senior, family, and community centers, professional and human service organizations serving the Hispanic elderly, and other outreach sites, both in English and Spanish;
- 5) Primary responsibility for intake and counseling clinic at Hispanic elderly outreach sites, providing direct individual legal services to Spanish-speaking elders; and evaluating and preparing cases for direct handling and/or referral to panel attorneys, i.e., in-depth client interviews, fact-finding, obtaining and examining relevant documents, contacting opposing parties where appropriate and discussion of case with Managing Attorney or Executive Director.

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.

First, the Service does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in law or a related field. The proffered position appears to combine the duties of a paralegal with those of a translator. In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, the Department of Labor describes the job of a paralegal in part 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 . . .

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 in small and medium-sized law firms usually perform a variety of duties that require a general knowledge of the law. For example, they may research judicial decisions on improper police arrests or help prepare a mortgage contract. Paralegals employed by large law firms, government agencies, and corporations, however, are more likely to specialize in one aspect of the law.

The types of duties the petitioner ascribes to the beneficiary fall primarily within the scope of a paralegal position. For example, the petitioner states that the beneficiary will evaluate and prepare cases for direct handling and/or referral to panel attorneys. Such duties are among those mentioned above for a paralegal position. A review of the Handbook finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a paralegal. There are many ways to become a paralegal. Employers usually require formal paralegal training

obtained through associate or bachelor's degree programs or through a certification program. Employers increasingly prefer graduates of 4-year paralegal programs or college graduates who have completed paralegal certificate programs. In addition, some employers prefer to train paralegals on the job, hiring college graduates with no legal experience or promoting experienced legal secretaries. Other entrants have experience in a technical field that is useful to law firms, such as a background in nursing or health administration for personal injury practice or tax preparation for tax and estate practice.

The proffered position also includes translator duties. The petitioner, however, has not established that the beneficiary's duties as a translator are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with Spanish or a less extensive education, is necessary for the successful completion of its duties.

Counsel argues that the beneficiary's translator duties are akin to those of a technical writer. Counsel cites unpublished AAU decisions, which have no precedential effect in this proceeding. See 8 C.F.R. 103.3(c). Counsel also cites published decisions. It is noted, however, that in Matter of Desai, 17 I&N Dec. 569 (BIA 1980), the beneficiary, a technical writer, possessed the equivalent of a bachelor of science degree in mechanical engineering in addition to a degree in journalism. Even if the Service were to agree with counsel's argument that the petitioner's duties are the essence of technical writing that would generally require a college degree as a technical writer, it cannot be concluded that the proffered position is a specialty occupation as the petitioner does not require a bachelor's degree with an emphasis on both writing and science (or in this case, both writing and law). Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, 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 such as law, for the offered position. It is noted that the petitioner's "Legal Staff List 2000" includes a senior legal assistant and an Asian legal advocate/translator who, although hold baccalaureate degrees, do not appear to hold law degrees. 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 in parallel positions. 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.

The record contains three letters from individuals involved in the legal services/translation industry. Only one of the writers specifically states that the usual requirement for positions such as the proffered position is a baccalaureate degree in a field related to the type of type of materials being translated. Even if all of the writers had indicated that such a degree was required, three letters are insufficient evidence of an industry standard. The writers have not provided evidence in support of their assertions. In addition, none of the writers have indicated the number or percentage of translators who hold such degrees.

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.

**ORDER:** The appeal is dismissed.