



U.S. Department of Justice

Immigration and Naturalization Service

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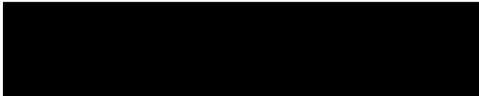
OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: LIN-01-130-52979 Office: Nebraska Service Center

Date: OCT 10 2002

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:

SELF-REPRESENTED

**PUBLIC COPY**

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a law firm with ten employees and a gross annual income of \$4 million. It seeks to employ the beneficiary as a paralegal assistant for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner 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 concluded that the petitioner had not established that a baccalaureate degree in a specific specialty is required for the proffered position of paralegal.

On appeal, the petitioner argues that the Department of Labor (DOL) has determined in its Dictionary of Occupational Titles (DOT) that a position as a paralegal requires at least a bachelor's degree. The petitioner states that most of its legal assistants are law students and that the minimum admission requirement for any law school is a baccalaureate degree.

The petitioner's argument 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:

Assists lawyers in preparation of cases on behalf of clients. Translates for Polish speaking clientele.

In response to a Service request for additional evidence, the petitioner provided the following expanded description of the duties of the position:

Researches the law, investigates facts and assists lawyers in the preparation of cases on behalf of clients, investigates facts, coordinates and assists Polish speaking clientele, coordinates medical records, arranges medical evaluations for firm's clientele. Works up cases for filing and for trial, and assists in the preparation of the clientele for trial. Prepares various legal documents.

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.

The petitioner argues that the DOL has determined in its DOT that the proffered position of paralegal assistant is a specialty occupation. However, a reference in the DOL's DOT, Fourth Edition, 1977, standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations.

This type of information is currently furnished by the DOL in the various editions of the Occupational Outlook Handbook (Handbook). The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

The petitioner asserts that the proffered position is not merely a paralegal position but rather that of a legal assistant. The petitioner states that a paralegal normally handles filings and clerical functions whereas a legal assistant aids the attorneys in the preparation of individual cases. In support of these assertions, the petitioner cites the description of the duties of a paralegal as set forth in the DOT. It is noted that this excerpt from the DOT is the description of the duties of a paralegal, not those of a legal assistant. The duties of a paralegal as they are described by the DOL in the DOT are as follows:

Researches law, investigates facts, and prepares documents to assist LAWYER (prof. & kin.). . . Researches and analyzes law sources such as statutes, recorded judicial decisions, legal articles, treaties, constitutions, and legal codes to prepare legal documents, such as briefs, pleadings, appeals, wills, contracts, initial and amended articles of incorporation, stock certificates and other securities, buy-sell agreements, closing papers and binders, deeds and trust instruments for review, approval, and use by attorney. Investigates facts and law of case to determine causes of action and to prepare case accordingly. Files pleadings with court clerk. Prepares affidavits of documents and maintains document file. Delivers or directs delivery of subpoenas to witnesses and parties to action. May direct and coordinate activities of law office employees. . . .

The Handbook, 2002-2003 edition, describes the work of a paralegal or legal assistant at page 214 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,

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.

The duties of the proffered position as described by the petitioner fall within the normal range of duties of paralegals as that occupation is described in both the Handbook and the DOT. The Handbook at pages 215-216 does not indicate that a bachelor's degree in a specific field of study is the normal minimum requirement for employment as a paralegal. There are several ways to become a paralegal. Employers usually require formal paralegal training obtained through associate or bachelor's degree programs or through a certification program. Increasingly, employers prefer graduates of 4-year paralegal programs or college graduates who have completed paralegal certificate programs. 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 tax preparation for tax and estate practice, or nursing or health administration for personal injury practice.

Additionally, the petitioner has not established that the beneficiary's translation duties are of such complexity that a baccalaureate degree in a specific specialty is necessary for the successful performance of its duties. While the beneficiary may very well be fluent in Polish, she does not possess a formal degree in this language and her familiarity with it derives from the fact that she is a native speaker of the language. The petitioner has not shown that a bachelor's degree in a specific field of study is the normal minimum requirement for the position being offered to the beneficiary.

The petitioner has not submitted any evidence to show that the degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner states that most of the individuals employed by the firm as paralegals are law students who were required to have a baccalaureate degree for admission to law school. In support of this statement, the petitioner submits material setting forth the admission requirements for entry into John Marshall Law School and DePaul Law School. While law schools require a baccalaureate degree for admission, there is no stated requirement that the

degree must be in a specific field of study. According to the material submitted by the petitioner, law schools place significant emphasis on an admission candidate's undergraduate grade point average and the individual's performance on the Law School Admissions Test (LSAT). While the petitioner prefers to hire law students for its paralegal positions, this preference does not show that the offered position is a specialty occupation since law students may have baccalaureate degrees in a variety of specialty areas. Thus, 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.

Finally, the petitioner has not shown that the duties of the offered position are so specialized and complex that the knowledge required to perform the duties is normally associated with the attainment of a bachelor's degree in a specialized area. The duties of the proffered position do not appear to be any more complex than those normally expected of paralegals. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a bachelor's degree in a specialized area is the minimum requirement for employment as a paralegal or legal assistant.

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.