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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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prevent clearly unwarranted
invasion of privacy

File: EAC-02-193-52364 Office: Vermont Service Center

Date: OCT 18 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a law office with nine employees and a gross annual income of \$215,000. It seeks to employ the beneficiary as a paralegal 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 and supporting documentation.

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.

8 C.F.R. 214.2(h)(4)(ii) further 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 petitioner had failed to establish that the duties of the offered position are so complex that a baccalaureate degree in law or a related field is required for the performance of the duties.

On appeal, the petitioner asserts that the firm requires a bachelor's degree for its paralegal positions. The petitioner further asserts that the degree requirement is common to the industry in parallel positions among similar organizations.

The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The Service considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- a) Assist in preparing uncollected bills for small claims and arbitration[.]
- b) Assist in filing uncollected bills for small claims and arbitration.
- c) Research and analyze legal articles, recorded judicial decisions, statutes.
- d) Prepare legal documents.
- e) Carry out correspondence with clients using legal terminology.
- f) Handle, update files and keep records of the legal documents.

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

1. Prepare the cases for litigation or arbitration,
2. Research and analyze legal articles, recorded judicial decisions, statutes etc.,
3. Help prepare legal documents,
4. Investigate the facts of the case and determine causes of action,
5. Apply the law to the facts of the case,
6. Prepare legal documents such as pleadings, appeals, memorandum of law etc.,
7. Assist attorney during trial,
8. Assist in preparing uncollected bills for small claims and arbitration,
9. Assist in filing uncollected bills for small claims and arbitration,

10. Handle, update files and keep records of the legal documents,
11. Carry out correspondence with clients using legal terminology.

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 asserts that the Department of Labor (DOL) has determined in its Dictionary of Occupational Titles (DOT) that a paralegal position requires a bachelor's degree in law or a related field of study. However, a reference in the Department of Labor'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 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 Handbook, 2002-2003 edition, describes the duties of paralegals at page 214 as follows:

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.

A review of the Handbook at page 215 finds no requirement of a baccalaureate or higher degree in law or a related area 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. Counsel argues that this statement shows that a bachelor's degree in law is a standard minimum requirement for paralegal positions. While many employers now prefer graduates of 4-year paralegal programs, this statement does not show that such degree is a minimum requirement for entry into the occupation. Some employers prefer to train paralegals on the job, hiring college graduates with no legal experience or promoting experienced legal secretaries. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

The petitioner asserts that the degree requirement is common to the industry in parallel positions among similar organizations. In support of his assertion, counsel submits 25 internet job ads for paralegal positions. Most of the ads state that the successful candidate must have a bachelor's degree and paralegal certification. However, not one of the ads specifies that the bachelor's degree must be in law or a related field of study. These ads support the DOL's statement in the Handbook that the

standard requirement for paralegals in the industry is a bachelor's degree and paralegal certification.

The petitioner states that the firm requires that its paralegals have a law degree. The petitioner further states that both of its other paralegals have law degrees, and are admitted attorneys, one in the State of New York and one in the States of New York and Massachusetts. Although the petitioner's past hiring practices suggest that it prefers to hire individuals with a law degree for the offered position, the petitioner's reasoning is problematic when viewed in light of the statutory definition of specialty occupation. The Service 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 bachelor's 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 the Service 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 a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have bachelor's degrees. See id. at 388. In this case, the duties of this particular position do not appear to be any more complex than those normally required of paralegals as that job is described in the Handbook. 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.

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 baccalaureate degree in a specific field of study.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it

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." Supra at 387.

is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

With respect to counsel's objection to denial of this petition in view of the approval of a similar petition in the past, this Service is not required to approve petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain a copy of the previously approved petition and its supporting documentation. It is, therefore, not possible to determine definitively whether they were approved in error or whether the facts and conditions have changed since those approvals. The Associate Commissioner, through the Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. Louisiana Philharmonic Orchestra v. INS, 2000 WL 282785 (E.D.La.).

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.