



*DR*

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

[Redacted]

File: EAC-01-218-51563 Office: Vermont Service Center

Date: **SEP 30 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:

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*  
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 lawyer with a gross annual income of \$150,000. He seeks to employ the beneficiary as a legal analyst 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 statement.

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 record does not 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 states that the position being offered to the beneficiary is more complex than that of a paralegal. The petitioner further states that the duties of this particular position are so complex that they can only be performed by an individual with a bachelor's degree in the field of law.

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:

Participate as part of legal team representing clients and their interest in litigation matters. Coordinate work of outside counsels/experts on behalf of clients. Review, clarify and organize legal evidence and documentation for legal use. Produce supportive documentation/insight reports relevant to litigation.

On appeal, counsel provides the following expanded description of the duties of the position:

The Legal Analyst as outlined in the original petition will be required to prepare documents such as legal briefs, Interrogatories and Requests for Production of Documents and Admissions, Motions for Summary Judgment, Motions for Default Judgment, Motions to Compel discovery and other type motions [sic] with supporting Legal Memorandums in support of such motions for argument by the lead attorney in the case. In addition the Legal Analyst will be heavily involved in the preparation of the case and the clients for trial as well as researching, investigating and preparing the evidence as necessary for the lead attorney.

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 Service does not agree with the petitioner's assertion that the proffered position is more complex than that of a paralegal. The Department of Labor (DOL) describes the duties of a paralegal in its Occupational Outlook Handbook (Handbook), 2002-2003 edition 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 draft 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.

The duties of the proffered position do not appear to be any more complex or specialized than the normal duties of a paralegal as described in the Handbook. For example, the beneficiary will prepare documents such as legal briefs and motions, as well as research, investigate, and prepare evidence for the lead attorney.

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. 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 various job postings 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 has not submitted any evidence to show that he requires a bachelor's degree in law or a related field as part of the hiring process such as job ads.

The petitioner asserts that the duties of the offered position are more specialized and complex than those of a normal paralegal position since the holder of the offered position must prepare documents such as legal briefs and motions. The petitioner further asserts that the holder of the offered position will be heavily involved in the preparation of the case and clients for trial as well as researching, investigating and preparing the evidence as necessary for the lead attorney. However, as stated above, the duties of the offered position do not appear to be any more complex and specialized than those normally required of paralegals as that job is described in the Handbook. According to the Handbook, there is no requirement of a baccalaureate or higher degree for employment as a paralegal.

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.

Beyond the director's decision, it is noted that the LCA submitted by the petitioner was certified on August 29, 2001, a date subsequent to June 13, 2001, the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. As this has not occurred, the petition may not be approved.

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.