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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536



FILE: EAC 02 010 51966 Office: VERMONT SERVICE CENTER

Date: DEC 16 2003

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

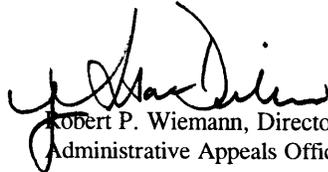
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a law firm. It employs two people and has a gross annual income of \$200,000. It seeks to temporarily employ the beneficiary as a paralegal for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the director erred in making his decision and that the position is a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 position description submitted with the petition states that the beneficiary would: "[P]repare legal documents such as briefs, pleadings, appeals, wills, contracts, deeds, stock certificates, securities and other legal instruments for review, approval and use by attorneys, to translate foreign legal documents, mostly in Korean, Chinese and English, to research law sources, and to investigate facts."

In the petitioner's response to the director's request for evidence, the duties are explained further:

We expect the candidate to be able to investigate the facts of the cases and gather all relevant and necessary information. We expect the candidate to also be able to identify appropriate laws, judicial decisions, legal articles and other materials that are relevant to assigned cases and prepare written reports that we use in determining how the cases should be handled. . . . The paralegal should be able to look through the caselaw, [sic] statutes and various resources and collect relevant information for use by the attorneys. Also, the paralegal should be adept in writing because a great portion of the paralegal's work is in writing letters, memos and drafting documents.

The director denied the petition because the petitioner had not established that the proffered position is a specialty occupation that requires a baccalaureate degree in a specific field of study, or that its duties are so specialized and complex that the knowledge to perform them is usually associated with the attainment of a bachelor's degree.

On appeal, the petitioner asserts that the tasks are highly specialized and complex, requiring the beneficiary to possess "the critical ability to analyze and understand difficult and highly specialized documents and information in different languages," and that these skills are "obtained through years of serious studies and practical training offered in higher learning institutions."

In order to determine whether the beneficiary qualifies for the benefit sought, it is necessary to address the four criteria outlined at 8 C.F.R. § 214.2(h)(4)(iii)(A) to determine whether the position can be considered a specialty occupation. The petitioner need only show that the position meets one of the criteria in order to establish it as a specialty occupation. Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Section 214(i)(1)(B) of the Act provides further information about what is necessary in order to meet this criterion, in that it defines the term "specialty occupation" as an occupation that requires "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." (Emphasis added).

Regarding paralegals, the 2002-03 edition of the Department of Labor's *Occupational Outlook Handbook (Handbook)* states on page 214:

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.

There is no clear standard for how one prepares for a career as a paralegal and no requirement for a degree in a specific specialty. The requirements vary by employer as to what course of study might be appropriate or preferred. As a result, the proffered position cannot be considered to have met this criterion.

II. 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.

A. Degree Requirement is Common to the Industry

Factors often considered by CIS when determining the industry standard include: whether the *Handbook* reports that the industry requires a degree, whether the industry's professional association has made a degree a minimum entry requirement, and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F.Supp. 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for paralegals were discussed in the previous section, and shall not be repeated here. The petitioner did not submit any evidence to establish that a degree requirement is common to the industry.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform it.

The petitioner has submitted no documentation that the position of a paralegal is either unique or so complex that only an individual with a degree in a specific specialty could perform the job.

III. The employer normally requires a degree or its equivalent for the position

The petitioner states that it had previously hired a paralegal with a bachelor's degree in political science. This does not meet the terms of the regulations in providing evidence that an employer requires a degree in a specific specialty, as the beneficiary has the equivalent of a bachelor's degree in Chinese.

IV. 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 states on appeal that the proffered position requires "the level of intelligence and the kind of fundamental

research, writing and communicating skills that could be attained only through an institution of higher learning."

The position descriptions submitted by the petitioner indicate that the beneficiary would perform the standard duties of a paralegal, i.e., research, writing, and drafting of legal documents. In addition, the beneficiary would be responsible for translating documents, which is not a standard function of a paralegal. It is clear that the petitioner wants an employee with a college degree, and also that it believes that the position requires such an employee. It is not clear, however, that the duties could not be performed by an individual who was trained in a different manner, such as through one of the options discussed in the *Handbook*. Without more persuasive evidence as to the specialized or complex nature of the position, the petitioner has not met this criterion.

The petitioner has failed to establish that any of the four criteria enumerated above are present in this proceeding. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.