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U.S. Department of Homeland Security
Citizenship and Immigration Services

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prevent clearly unwarranted

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, N.W.
Washington, DC 20536

FILE: WAC 01 250 50782

OFFICE: CALIFORNIA SERVICE CENTER

DATE: OCT 16 2003

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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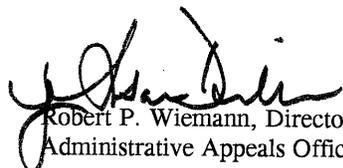
INSTRUCTIONS:

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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a law firm that employs two persons and has a gross annual income of \$150,000. It seeks to employ the beneficiary as a legal assistant. The director denied the petition because the position does not qualify as a specialty occupation.

On appeal, the petitioner submits a written letter. The petitioner states, in part, that the position requires a bachelor's degree and provides additional details concerning the proffered position and the beneficiary's qualifications.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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.

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

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 asserts that the proffered legal assistant position is a specialty occupation. Citizenship and Immigration Services (CIS) does not simply rely on a position's title 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 CIS considers. The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS 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 baccalaureate or higher 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 CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien

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." See *id.* at 387.

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 baccalaureate or higher degrees. See *id.* at 388.

In its initial petition, the petitioner's support letter, dated February 27, 2002, detailed the job duties to be performed by the beneficiary as follows: "Interview and do intake for foreign-speaking clients (Bulgarian, Russian)[;] [r]esearch law, investigate facts, [and] prepare legal documents[; and] [f]ile pleadings with the court."

The petitioner required a bachelor's degree and two years of experience.

Subsequent to the filing of the petition, the director requested from the petitioner a detailed job description; the percentage of time to be spent on each duty; the beneficiary's level of responsibility and hours per week of work; the types of employees supervised; the minimum education, training, and experience necessary to do the job; and an explanation why the work requires an individual with a college degree or higher in the occupational field. Additionally, the director requested evidence that the position requires a baccalaureate or higher degree or its equivalent; that a degree requirement is common to the industry in parallel positions among similar organizations; that the employer normally requires a degree or its equivalent for the position; or that the nature of the duties are so specialized and complex that knowledge required to perform the duties is usually associated with attainment of a baccalaureate or higher degree. In response to this request, the petitioner provided the following job description:

The position of Legal Assistant is complex and requires a college degree. The legal assistant does the initial client intake; investigates the facts in a case; researches the law; determines causes of action; communicates with clients; communicates with the attorney in order to prepare the case; drafts legal documents such as briefs, pleadings, etc.; prepares immigration applications and petitions for various types of cases/labor certification; relative petitions; asylum applications; H, L, O, P visa applications[sic]; [and] negotiates with insurance adjusters [for] personal injury settlements. The job requires use of database software for case management and various computer programs, such as Legal Solutions, ImmForms, [and] WestLaw.

The director denied the nonimmigrant visa petition because the petitioner failed to meet his evidentiary burden to prove the proffered position is a specialty occupation. The director cited the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as evidence that a paralegal position does not require a baccalaureate degree or higher or its equivalent to enter into the occupation.

On appeal, the petitioner provides additional details concerning the legal assistant position:

The offered position requires a bachelor's degree. Our law firm works primarily with clients from [sic] Bulgarian and Russian descent. We represent clients in these two countries in negotiating business deals, preparation [sic] and execution [sic] of contracts, and other legal matters.

At this point we need somebody with a bachelor's degree and a Bulgarian license to work as a paralegal at our office here in the United States and also on assignment representing clients in Bulgaria as necessary.

The petitioner has not met any of the requirements to qualify the offered position as a specialty occupation. The *Handbook*, 2002-2003 edition, at page 214, describes the duties to be performed by a legal assistant 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. Nevertheless, they are still explicitly prohibited from carrying out duties which are considered to be the practice of law, such as setting legal fees, giving legal advice, and presenting cases in court.

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.

In addition to this preparatory work, paralegals also perform a number of other vital functions. For example, they help draft contracts, mortgages, separation agreements, and trust instruments. They also may assist in preparing tax returns and planning estates. Some paralegals coordinate the activities of other law office employees and maintain financial office records. Various additional tasks may differ, depending on the employer.

The duties delineated in the *Handbook* reflect the duties described by the petitioner for the proffered position. A review of the *Handbook* at page 173, finds no requirement of a baccalaureate or higher degree or its equivalent in a specific specialty for employment as a legal assistant:

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.

The *Handbook* clearly shows that a legal assistant does not require a bachelor's or higher degree or its equivalent in a specific field of study to enter into the position. Instead of specifying a specific field of study required to enter into the field, the *Handbook* delineates a multitude of educational backgrounds that could be preferred but not required by prospective employers. The *Handbook* also illustrates that it is possible for an individual with no more than a two-year post-secondary school degree or completion of a certificate program to perform the duties of a legal assistant.

Additionally, the petitioner describes duties involving

interpretation and translation. According to the *Handbook's* description of duties and training requirements for interpreters and translators at 596, long-term on-the-job training is the most significant source of training for these types of position and no degree is required. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the position.

There is no evidence that a degree requirement is common to the industry in parallel positions among similar organizations. 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. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)). The *Handbook*, as discussed above, does not report that legal assistants require a degree. The record does not contain any evidence concerning an industry professional association or expert affidavits.

The petitioner, in its response to the director's request for evidence, stated "it is a common practice in the legal field to require a bachelor's degree for this position." The petitioner also submitted one employment announcement. The announcement requests an experienced legal assistant and states a preference, but not a requirement, for candidates with bachelor's degrees. The announcement provides only the name of the employer with an assertion that it is a "leading L.A. area immigration & nationality practice." The AAO has no evidence to verify the employer's organization and whether or not it is similar to the petitioner. Additionally, the announcement did not state a requirement, only a preference, for degreed applicants and includes no additional evidence concerning the credentials of individuals hired for the position(s). To date, the record does not include any evidence to support that a degree requirement is common to the industry in parallel positions among similar organizations. Thus, the petitioner has not established the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Additionally, there is no evidence that the petitioner normally requires a degree or its equivalent for the position. In its response to a request for evidence from the director, the petitioner asserted, "the position of Legal Assistant in our firm has always been held by someone with a college degree, and I believe it is a necessary requirement for the position." The petitioner offered no evidence concerning its past hiring practices

for the proffered position. The petitioner has two employees but to date, the record contains no information concerning either employee's identity, position held, or credentials, such as a curriculum vitae or diplomas. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Thus, the petitioner has not established the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, there is no evidence to find that 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 involves duties that exactly reflect the duties outlined in the *Handbook* for legal assistants. The AAO has not received any evidence that the petitioner's proffered position is more specialized and complex than a regular legal assistant position. Thus, the petitioner has not established the criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Accordingly the director's decision shall not be disturbed.

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. The petition is denied.