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U.S. Department of Homeland Security

Citizenship and Immigration Services

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DA

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

[REDACTED]

OCT 28 2003

File: LIN 02 132 51487 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
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

[REDACTED]

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
Robert P. Wiemann,
Director, Administrative Appeals Office

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

The petitioner is a Madison, Wisconsin law firm with nine employees and a gross annual income of \$450,000. It seeks to employ the beneficiary as a legal assistant for a period of three years. The director determined that the position offered was not a specialty occupation because the petitioner had not established that a bachelor's degree, or its equivalent, in a specific field of study is required. On appeal, the petitioner asserts that the position of legal assistant is a specialty occupation, because it requires a bachelor's degree along with at least one year of law school studies.

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:

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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In its original filing, received at the service center on March 13, 2002, the petitioner indicated that the proposed job duties include administrative responsibilities, such as making computer backup disks, managing a system of attorney time reporting, and preparing announcements and brochures, as well as legal duties, such as conducting research and drafting documents. The petitioner did not state that it requires a bachelor's degree in a specific specialty. On April 15, 2002, the director requested evidence that the proffered position constitutes a specialty occupation. In response, the petitioner submitted several job announcements as well as the resumes of legal assistants previously employed by the petitioner.

On June 26, 2002 the director denied the petition. The director noted that none of the submitted documents indicated that an undergraduate degree in a specific field of study is necessary to perform the duties of the proffered position. On appeal, the petitioner asserts that the director interpreted too narrowly the requirement that the degree be in a specific field of study, and also that the proffered position meets all four of the regulatory criteria listed above.

In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)

Citizenship and Immigration Services (CIS) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for guidance regarding educational requirements. The *Handbook* 2002-2003 edition on page 215 discusses the educational requirements for legal assistants and paralegals. The *Handbook* indicates that, while employers increasingly prefer to hire graduates of four-year paralegal programs or college graduates who have completed paralegal certificate programs, there are many avenues to entry into this field, including promotion from a legal secretary position, completion of high school and a brief paralegal training course, and completion of an associate's degree program. In fact, the *Handbook* does not state that a

specific field of undergraduate study is a requisite. CIS notes that, if a bachelor's degree or its equivalent in a variety of disciplines is the minimum entry requirement, then the job is not a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. §1184(i)(1).

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 - 8 C.F.R. § 214.1(h)(4)(iii)(A)(2)

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.2d 1151, 1165 (D.Min. 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 a legal assistant position were discussed in the previous section, and shall not be repeated here.

In the instant petition, to establish the industry standard, the petitioner submitted several job announcements. Three of these are for judicial law clerks, a position that is not equivalent to a paralegal or legal assistant. The two other announcements, one for a law clerk and the other for paralegal positions, do not specify in which field of study the bachelor's degree is required.

In addition, the petitioner submitted no documentation that any professional legal assistant association has made a bachelor's degree a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

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 it can be performed only by an individual with a degree. In the instant petition, the petitioner has submitted no documentation that the proffered position would involve duties seen as either unique or complex that only an individual with a degree in a specific specialty could perform them.

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h)(4)(iii)(A)(3)

In response to the director's request for evidence, the petitioner submitted five resumes of other legal assistants it has hired. These five individuals held bachelor's degrees in a variety of different disciplines. These documents thus do not establish the above criterion.

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 - 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)

To date the petitioner has placed no information on the record with regard to the specialized and complex nature of the proffered position. The job description in the original petition contains work duties that are similar to any legal assistant position. Although the petition states that, due to the complexity of its clients' needs, it requires paralegals who have completed at least one year of law school, no further documentation as to any specialized or complex duties within this description has been placed on the record. Without more persuasive evidence as to the specialized or complex nature of the position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

A review of the entire record fails to reveal any evidence that the offered position requires a bachelor's degree, or its equivalent, in a specific discipline. 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. Accordingly, the director's decision will be affirmed.

ORDER: The director's decision denying the petition is affirmed. The appeal is dismissed.