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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 I Street, N.W.
Washington, DC 20536

OCT 31 2003

FILE: EAC O2 175 52690 OFFICE: VERMONT SERVICE CENTER DATE:

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

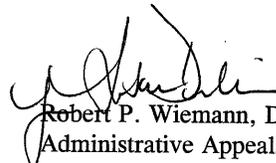
INSTRUCTIONS:

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 currently employs one person and has a gross annual income of \$69,719. It seeks to employ the beneficiary as a paralegal for a period of three years. The director denied the petition as failing to establish that the proffered position qualified as a specialty occupation.

On appeal, the petitioner submits a brief.

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.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an one 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's Form I-129 assigned the job title "Paralegal" to the proffered position, and identified the proposed duties as:

Assist the attorney in all legal cases. Explain legal concepts to clients and assist in case preparation.

Among the documents submitted with the Form I-129 was a letter from the petitioner on the proffered position. According to this letter, the petitioner is a legal firm that specializes in legal services to immigrants. The letter further states that the petitioner's two attorneys require "an educated paralegal" to assist them and their clients. According to the letter, the paralegal position required abilities to investigate facts; to conduct a broad range of legal research and analysis; and to prepare legal documents, such as appeals, immigration petitions, and personal-injury demand letters. Here the petitioner also asserted that a college education is necessary because of the information compilation, analysis, and presentation skills required by the paralegal position. The petitioner also stated that a business background, in particular, is required, because much of the paralegal's work will involve business immigration matters, such as labor certificates and E, H-1B, and L visas. The letter also contends that a business background is necessary for the paralegal's "being able to draft personal injury settlement negotiations with insurance companies as well as for analyzing the damages involved in any other legal claim."

Furthermore, the letter cited two Department of Labor (DOL) publications: a *Dictionary of Occupational Titles (DOT)* Specific Vocational Preparation (SVP) coding of "7" as an indication that a "bachelor's degree is the standard level for training" for entry into the paralegal field, and (2) page 215 of the *Occupational Outlook Handbook, 2002-2003 Edition (Handbook)* for the proposition "that it indicates that '[some] employers prefer to train paralegals on the job, hiring college graduates with no legal experience....'" (Emphasis is original.)

The petitioner's letter also stated that additional duties included maintaining the firm's library and keeping all its legal texts up to date.

The director issued a request for additional information, which, in part, noted that the duties as described in the petition documents did not indicate either (1) the need for a bachelor's degree in any specific specialty, or (2) a preponderance of duties that would be so complex as to be considered professional in nature. The director requested several types of evidence relevant to the proffered position's daily duties, the industry standard on minimum educational requirements for positions parallel to the one proffered, and the need for a degree in a specific specialty.

In response to the director's request, the petitioner submitted a letter which contended that the proffered position required a college-degreed person "with a business background." This letter outlines three major areas of work which necessitated a person with a college degree and a business background:

1. Research: According to the petitioner, the high volume of business immigration cases required the paralegal to review client companies' basic documentation, make preliminary determinations as to the likelihood of success of their business-based applications, determine the need for additional documentation, and request additional information when needed.
2. Business Planning: The petitioner contended that it required a college-degreed paralegal with a business background because of the need to make business oriented investigations and preliminary determinations in the areas of E and L visas, and to prepare quality business plans for client companies submission on E and L visa applications, plans which included "a thorough description of the business project, an explanation of competitive advantages, mission statements, objectives, timetables, presentation of the entrepreneur, strengths and weaknesses, description of the business sector and how the entrepreneur will compete in the business sector, marketing strategy and planning, a description of the legal organization of the entrepreneur's company and reasons for a given business organization, and, lastly a description of the skills the employer will require in future employees."
3. Brief Preparation: The petitioner stated that, for the supervising attorney's final review, the paralegal will prepare and assemble the documentation and briefs required for all the firm's cases. According to the petitioner, E and L visa petitions will especially require a business background due to the need to develop and submit business plans. The petitioner's expectation was that 30 percent of the paralegal's work will be in information gathering, and 70 percent in preparing immigration related briefs and writing petitions for

attorney review. The petitioner added that the firm's expanding practice in personal injury and bankruptcy also required a business background and related abilities, especially because the paralegal needed to understand the financial impact of bankruptcy and personal injuries, and also needed the ability to prepare demand letters and briefs based upon that understanding.

The petitioner's letter cited the "7" SVP rating for the proposition that it "is prima facie evidence of a specialty occupation."

The director denied the petition for failure to establish that the proffered position was a specialty occupation within the meaning of the Act, and specifically stated that the duties of the proffered position "do not appear to be so complex and specialized that they require the services of at least a bachelor's degree or equivalent in a 'specific field of study.'" In the denial, the director stated that, contrary to the petitioner's statement about prima facie evidence, the "7" SVP rating as merely means "that 2 years is the [educational] requirement **and sometimes up to 4 years is required.**" (Emphasis in original.) The denial also included this language, which the appeal directly rebuts:

The petitioner made an extensive argument that the proposed position would not essentially be that of a "form filler" or a secretary, but one that would assist in preparation of quality business immigration petitions.

However, this Service is not convinced that the duties described above demonstrate that the preponderance of the beneficiary's job duties will be so complex that they could be considered professional in nature. Rather, the duties that you have described appear to be more indicative of an Assistant who assists in the basic operations of a small law firm, which does not require a bachelor's degree in a "specific specialty." This appears to be very evident in the fact that your firm currently only has one employee, which means that there is currently no one available to do the secretarial/administrative tasks such as answering the phones, typing, etc[.] that are normally associated with a law firm.

On appeal, the petitioner contends that the director based the denial on conjecture and speculation rather than on the evidence presented. The petitioner rebuts the director's statements to the effect that the duties of the proffered position were secretarial and administrative, rather than the type that a paralegal would perform. In response to the director's remarks about the SVP

rating, the petitioner emphasized that 8 C.F.R. § 214.2(h) (4) (iii) (A) (2) and (4) both "permit an employer to show that the particular position offered is so complex that it can be performed only by an individual with a degree." The appeal also restates the information presented in the petitioner's letter of reply to the request for additional information, and states that the size of the law firm should not be held against it.

In due exercise of its appellate authority, the AAO has reviewed the entire record of evidence to independently determine the merits of the petition. The AAO agrees that the director incorrectly discussed administrative and secretarial duties that would be performed in the firm. The AAO also concurs with the petitioner that the law firm's size should not be a factor in determinations on the petition. Also, contrary to the director's finding that the duties appear more indicative of a secretarial/administrative assistant, the evidence does establish that the proffered position is indeed a paralegal's. Nonetheless, the evidence is insufficient to establish that the particular paralegal position proffered here is a specialty occupation.

In making this determination, the AAO reviewed the complete record to determine whether the petitioner has established that the proffered position satisfied any one of the qualifying criteria of 8 C.F.R. § 241.2(h)(4) (iii) (A). In this endeavor, the AAO looked beyond the title of the position and carefully reviewed all the evidence relevant to the duties of the position and the knowledge, education, special training, skills, and experience that their exercise entails. The following discussion will address the insufficiency of evidence under each criterion.

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

The issue here is whether the record establishes that the proffered position is one which normally requires, as a minimum for entry, a bachelor's degree or equivalent in a specific specialty.

The AAO consults the *Handbook* for information about entry-level requirements for certain occupations. The treatment of paralegals and legal assistants at pages 213 to 216 of the *Handbook's* 2002-2003 edition indicates that the duties of the proffered position are within the scope of the paralegal occupation and that entry into said occupation does not normally require a bachelor's degree in any specific specialty. This excerpt from page 215 of the *Handbook* indicates a broad educational range of entry-level paralegal positions:

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 AAO accorded no weight to the DOT's SVP rating of paralegal positions, although cited by both the petitioner and the director. Neither the DOT nor DOL's current replacement, the *Occupational Information Network (O*Net)*, are persuasive sources of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. Neither of these sources are as comprehensive as the *Handbook*, on whose information the AAO routinely relies for a description of the nature of a particular occupation and the education, training and experience normally required to enter into and advance within that occupation.

Finally, the AAO discerned no aspect of the proffered duties which would require the theoretical and practical application of a body of highly specialized knowledge.

II. Degree requirement that is common to the industry in parallel positions among similar organizations, or, alternatively, a particular position so complex or unique that it can be performed only by an individual with a degree.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (2).

A. Degree requirement common to the industry.

The petitioner presented no documentation relevant to an industry standard, although the director's request for additional evidence explicitly sought it. In fact, the petitioner did not even contend that a degree requirement is common to the industry.

B. Degree necessitated by the complexity or uniqueness of the position.

Despite the petitioner's insistence to the contrary, the record fails to establish that the particular duties of the proffered position are either so complex or so unique that only an individual with a bachelor's degree in a specific specialty could perform them. In fact, the duties appear no more complex than those which the *Handbook* indicates can be performed by paralegals

without a four-year degree or its equivalent. That the proffered position has no duties more complex than that of the paralegal occupation should be clear from this excerpt from page 214 the *Handbook*:

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.

Paralegals are found in all types of organizations, but most are employed by law firms, corporate legal departments, and various government offices. In these organizations, they may work in all areas of the law, including litigation, personal injury, corporate law, criminal law, employee benefits, intellectual property, labor law, bankruptcy, immigration, family law, and real estate. Within specialties, functions often are

broken down further so that paralegals may deal with a specific area. For example, paralegals specializing in labor law may deal exclusively with employee benefits.

III. Degree or its equivalent as the employer's normal requirement for the position.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (3).

As this is the first offering of the paralegal position, the record is devoid of any evidence on this criterion.

IV. Specific duties of a nature so specialized and complex as to require knowledge usually associated with a baccalaureate or higher degree.-8 C.F.R. § 14.2 (h) (4) (iii) (A) (4).

Despite the petitioner's maintaining that the proffered position's duties qualify under this criterion, the evidence does not establish that the specific duties are so specialized and complex that only a person with a baccalaureate degree in a specific specialty could perform them. The discussion above about 8 C.F.R. § 14.2 (h) (4) (iii) (A) (2) is equally applicable here.

As discussed above, the petitioner has failed to establish any one of the four specialty occupation criteria of 8 C.F.R. § 14.2 (h) (4) (iii) (A). Accordingly, it is concluded that the petitioner has not established that the proffered 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.

ORDER: The appeal is dismissed. The petition is denied.