

**PUBLIC COPY**

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

*DA*

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536



SEP 04 2003

File: EAC-02-037-55983 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)

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 the Bureau of Citizenship and Immigration Services (Bureau) 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, who affirmed his decision in a subsequent motion to reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a law firm with two employees and a gross annual income of \$300,000. It seeks to employ the beneficiary as a paralegal for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel 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 in part for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the Department of Labor (DOL) in its *Occupational Outlook Handbook (Handbook)* and in its *Dictionary of Occupational Titles (DOT)* has determined that a baccalaureate degree is required for a paralegal position. Counsel further states that the Bureau has approved petitions for all four of the petitioner's previous paralegals. Counsel additionally states that the petitioner normally requires at least a bachelor's degree in English or a related field, and that the record contains job advertisements to show that this degree requirement is industry wide.

Counsel's statement on appeal is not persuasive. The Bureau does not use a title, by itself, 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 the Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- Interview clients to get information for attorney[;]
- Prepare legal and supporting documents related to our cases, such as immigration cases, matrimonial cases, business transactions cases, real estate sale & purchase cases, trade mark application cases, adoption cases, name change cases, and other civil practice cases[;]
- Conduct legal researches [sic], analyses, and check law sources related to our cases, upgrade the case law information regarding to [sic] our practice[;]
- Translate up-to-date legal documents to provide current law information, regulations and policies related to China's economic, foreign joint venture, international trade and investment, etc.[;]
- Coordinate activities related to our foreign corporate clients' cases for which we will work together with our foreign law associates in China[; and]
- Interpret at immigration interviews for our clients and immigration officers[.]

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.

First, the Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in English or a related field. The proffered position is that of a paralegal. Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the DOL's *DOT* (4th Ed., Rev. 1991). However, the AAO does not consider the *DOT* a persuasive source of information regarding whether a particular job 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.

The DOL has replaced the *DOT* with the *Occupational Information Network (O\*Net)*. Both the *DOT* and *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The DOL's *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the *DOT*.

A review of the DOL's *Handbook*, 2002-2003 edition, at page 215, finds no requirement of a baccalaureate or higher degree for employment as a paralegal or legal assistant. Rather, the DOL finds that there are many ways to become a paralegal. Employers usually require formal paralegal training obtained through associate or bachelor's degree programs or through a certification program. In addition, 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 nursing or health administration for personal injury practice or tax preparation

for tax and estate practice. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, although the record indicates that the petitioner normally requires a baccalaureate degree in English or an equivalent thereof for the proffered position, the petitioner's reasoning is problematic when viewed in light of the statutory definition of specialty occupation. 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. As with employment agencies as petitioners, the Bureau 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 bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act.<sup>1</sup> To interpret the regulations any other way would lead to absurd results: if the Bureau was limited to reviewing a petitioner's self-imposed employment requirements, then any alien 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 bachelor's degrees. See *id.* at 388.

In this case, although the petitioner claimed to have hired only individuals with a bachelor's degree in English or an equivalent thereof for its paralegal positions, the position, nevertheless, does not meet the statutory definition of specialty occupation. The position, itself, does not require the theoretical and practical application of a body of highly specialized knowledge. Therefore, even though the petitioner has required a bachelor's degree in the past, the position still does not require a bachelor's degree in a specific specialty.

Third, although the record contains various job advertisements, none of the advertisements is persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. The majority of the advertisements do

---

<sup>1</sup> 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." *Supra* at 387.

not require a baccalaureate degree in a specific specialty as a minimum requirement for entry into the occupation.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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.

With respect to counsel's objection to denial of this petition in view of the approval of similar petitions in the past, the AAO is never bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), *aff'd*, 248 F. 3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.