



U.S. Citizenship
and Immigration
Services



FILE: WAC 02 187 50729 Office: CALIFORNIA SERVICE CENTER Date: APR 26 2004

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

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prevent clearly unwarranted
invasion of personal privacy**

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition 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 law firm that seeks to employ the beneficiary as a paralegal. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel asserts that the position is so complex and unique that it requires an individual with a minimum of a baccalaureate degree and with specialized knowledge to perform the duties.

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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the petitioner's letter of support dated May 1, 2002; (3) the director's request for additional evidence; (4) counsel's letter, dated November 26, 2002, that responds to the director's request; (5) the director's denial letter; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a paralegal. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letter in response

to the director's request for further evidence. According to the initial petition, the beneficiary would review patents and other documents from a database to select information as to the specific holder of the patent and invention for reporting to the attorney. According to the petitioner, he, with constant instruction and assistance, would closely supervise the beneficiary, and the beneficiary would only extract information. In his letter of support, the petitioner stated that he intended to focus on international intellectual property areas with both inbound and outbound capital investment programs. In the summary of terms of the oral agreement of employment, the petitioner stated that he intended to develop international business in the field of intellectual property and corporate law, with the assistance of the beneficiary.

In the petitioner's response to the director's request for further evidence, the petitioner stated that the law firm assisted in evaluating and arranging funding for environmental protections for American Indian tribes. With regard to the proffered position, the petitioner wanted to use the beneficiary to incorporate environmental products and services funded in connection with the petitioner's American Indian program into protecting the environment in other countries. The petitioner then stated that the position required language fluency in English, Bulgarian and Russian. Finally the petitioner stated that the position required the ability to analyze and translate legal documents from either the United States or Bulgaria and Russia.

The director found that the proffered position was not a specialty occupation and referred to the description of paralegal and legal assistants in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2000-2001 edition. Based on this document, the director noted that the position of paralegal did not require a baccalaureate degree. The director also determined that the petitioner had established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, the petitioner states that the proffered position is so complex and unique that it requires an individual with a minimum of a baccalaureate degree to perform the proposed duties. The petitioner reiterates a description of the work done by the law firm with regard to asset protection trust law for a Native American tribe, and explains its current interest in developing relations with Eastern European countries for the protection of the environment on a global scale. With regard to the uniqueness of the proffered position, the petitioner also asserts that the required language fluency in three languages and the knowledge of European law make the proffered position unique.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria 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." See *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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to academic credentials for paralegals, the 2004-2005 edition of the *Handbook* states that there are several ways to become a paralegal. The most common is through a community college paralegal program that leads to an associate's degree. The other common method of entry, mainly for those who have a college degree, is through a certification program that leads to a certification in

paralegal studies. A small number of schools also offer bachelor's and master's degrees in paralegal studies. Some employers 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, criminal justice, or nursing or health administration for personal injury practice. As correctly noted by the director, the proffered position does not require a baccalaureate degree in a specific specialty for entry into the position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted no further documentation regarding academic credentials required for other paralegals in similar firms. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner did not submit any information on current or former paralegals and their academic credentials. Therefore the petitioner has not met this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The petitioner initially indicated that the position involved research on patents and intellectual property, under supervision. The petitioner also stated that it wanted to expand its work in environmental protections for Native American Indians into the international arena and therefore the position required fluency in three languages and knowledge of European law. Nevertheless the record is devoid of any information as to what percentage of the beneficiary's time would be spent researching patents and what percentage would be spent in translating and analyzing foreign legal documents. The record is also devoid of information as to the relationship between the petitioner's work on behalf of Native American Indians and its projected work in Eastern Europe. In sum, the petitioner has not provided sufficient documentation to establish that the disparate duties outlined in the petition make the nature of the duties either specialized or complex. Without more persuasive testimony, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.