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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



File: SRC 02 239 55263 Office: TEXAS SERVICE CENTER

Date: **JAN 21 2004**

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 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 Director, Texas Service Center, denied the nonimmigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a law firm. It has twelve employees and a gross annual income of \$400,000. It seeks to temporarily employ the beneficiary as a law clerk for a period of three years. The director determined that the proffered position was a paralegal position and, as such, was not a specialty occupation.

On appeal, counsel asserts that the position of law clerk differs from that of paralegal in terms of the complexity and the more advanced nature of the duties. Counsel submits additional documentation.

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:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 the original petition received by the Texas Service Center on August 5, 2002, the petitioner described the duties of the proffered position as follows:

As a [l]aw [c]lerk, [the beneficiary] will closely assist staff attorneys. She will perform entry-level duties such as researching relevant immigration statutes, regulations, and judicial and administrative decisions. She will prepare reports summarizing findings to aid the attorneys in developing a case. As an essential part of her duties, [the beneficiary] will investigate facts related to various immigrant and non-immigrant cases, and draft legal documents for review and finalization by our attorneys.

The petitioner stated that it required a bachelor's degree and at least one year of education at an accredited law school for its law clerk hires. The petitioner also stated that the position of a law clerk required a minimum of a bachelor's degree in law, or in the alternative, a bachelor's degree and at least one year (and usually more) of graduate-level law school training at an accredited law school within the United States. The petitioner submitted the following documents:

- o Affidavit of Page Davidson, Esq., of Bass, Berry & Simms, PLC. Davidson is identified as the chair of the law firm's recruiting committee. Davidson stated that the law firm of Bass, Berry and Simms employed 15 law clerks and legal researchers. Davidson then stated that the prerequisites for a law clerk or legal researcher position was a bachelor's degree from an accredited college or university, and at least one year of law school attendance. Finally, Davidson stated that a specialized bachelor's degree and specialized training in the law is the minimum industry standard for law clerks and legal researchers.
- o Letter from Dorris Smith, Assistant Director, Vanderbilt Law School Career Services Office. Smith stated that the career services office received numerous requests from law firms seeking law clerks, who perform specialized legal duties including complex

legal research. Smith further stated: "A [l]aw [c]lerk is a law student who is enrolled in his/her first, second, or third year of law school," and that the law clerk possessed a minimum of a bachelor's degree and some level of law school education.

- o Four enquiries for law clerk positions sent to the Vanderbilt University Law School Career Services office from law firms in Tennessee, Georgia, and Michigan. The petitioner pointed out that all of the openings for law clerks required at least one year of law school to apply for the vacancy.

On August 14, 2002, the director asked for further information with regard to whether the proffered position was a specialty occupation. In particular, the director requested evidence to establish that the occupation of law clerk with the duties outlined by the petitioner was a specialty occupation. The director also requested evidence as to how the duties of a law clerk differed from the duties of a paralegal or legal assistant; evidence with regard to the industry standards for law clerks, paralegals, and legal assistants; evidence as to whether all three categories required four-year baccalaureate degrees; and evidence as to whether all the law clerks, paralegals, and legal assistants presently employed by the petitioner had four-year baccalaureate degrees.

In response, the petitioner submitted additional documentation and stated the following:

[The beneficiary] will be my personal [l]aw [c]lerk. I am the lead attorney and sole proprietor of Rose Immigration law firm, and am AV rated by Martindale Hubbell. This is the highest rating an attorney can achieve. I am also listed on the Bar Register of Preeminent Lawyers. [The beneficiary] will work directly with me and under my tutelage and supervision. She will perform all the duties listed in the petition. She also will meet with my clients and gather legal facts and data as required. She will analyze judicial and administrative decisions and assist me in planning case strategies.

In responding to the director's question with regard to how the duties of a law clerk differed from those of a paralegal, the petitioner stated that the job differences in the depth of responsibilities and the complexity of legal issues that the two types of jobs handled. The petitioner stated that law clerks analyzed and strategized the application of the law, and that law clerks worked directly with lawyers and judges, often side-by-side and under direct supervision of the lawyers. According to the petitioner, paralegal/legal assistants dealt with more administrative areas of law that did not raise complicated

questions. They provided support and back-up for the work that lawyers themselves ultimately performed.

The petitioner provided the *American Heritage Dictionary* definitions of law clerk and paralegal taken from the website *Dictionary.com*. The word paralegal is defined as "Of, relating to, or being a person with specialized training who assists an attorney." The word law clerk is defined as "a person, typically an attorney, employed as an assistant to a judge or another attorney, especially in order to gain legal experience."

The petitioner stated that being a direct assistant to a judge or a lawyer is more demanding and advanced than simply providing routine legal and administrative assistance. The petitioner added that, by definition, a law clerk is someone who, if not already an attorney, is about to embark on his or her career. With regard to the industry standard, the petitioner submitted the following two letters from law firms:

- o A letter from Rodney M. Barker, Barker, Epstein and Loscocco law firm, Boston, Massachusetts. Mr. Barker stated that a law clerk often was a law student who typically has completed at least the first year of law school. Alternatively, a law clerk is a first-year law school graduate who is preparing to enter legal profession as a lawyer. In the latter circumstance, the law clerk position was analogous to a post-doctoral fellowship. Mr. Barker also stated that his firm always required that a law clerk had completed at least one year of law school. He added that some law firms also required paralegal and legal assistants to possess at least a bachelor's degree.
- o A second letter from Dorris A. Smith, Associate Director, Vanderbilt University Law School Career Services Office. Smith stated that a paralegal/legal assistant was different from a law clerk because of the educational occupational requirements. No law school experience was generally required [of paralegals]. Paralegal/legal assistants conducted legal research and draft legal forms but little true analysis was involved.

The petitioner submitted its staff roster taken from its Internet website. In addition, the petitioner stated that the three law clerks at the petitioner's law firm all had bachelor's degrees and either possessed a law degree or had completed two years of law school. The petitioner also submitted a list of its five paralegal and administrative legal assistants. The petitioner indicated that two of these employees were enrolled in the Nashville School of Law.

With regard to the training requirement for paralegals, the petitioner submitted an excerpt from a document identified as the

instructor handbook for the Denver Paralegal Institute, Denver, Colorado; the Arizona Paralegal Training Program; and Southeastern Paralegal Institutes in Nashville, Tennessee, and Dallas, Texas. This document described the entrance requirements for enrollment in the paralegal programs as an associate or baccalaureate degree with a 2.0 grade point average. It added that candidates holding an associate degree must also complete an entrance exam and writing sample.

On August 24, 2002, the director denied the petition. The director stated that the petitioner had not established that the proffered position would normally require a bachelor's degree in law or a related field, and referred to the job classification of paralegal in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. The director found the duties listed by the petitioner for the proffered position to be similar to the duties of paralegals outlined in the *Handbook*.

On appeal, counsel submits legal decisions that describe the work of various attorneys as law clerks. Counsel also submits website information on the admission requirements for three law schools. In addition, counsel submits a letter from Robyn Lynne Ryan, a private attorney, who reiterates the contents of Mr. Barker's letter with regard to the duties of law clerks and paralegals. Finally counsel submits documentation with regard to new hiring practices of federal appellate court judges for law clerks.

It should be noted that the documentation submitted by the petitioner with regard to the hiring of attorneys as law clerks by various judges is found to be irrelevant to the present proceedings, as the beneficiary would not be assisting a judge; she would be employed by a private law firm.

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. 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)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. The *Handbook* does not examine the position of law clerk in any depth, but notes on page 596 the following job duties: "Assist lawyers or judges by researching or preparing legal documents. May meet with clients or assist lawyers and judges in court. Excludes lawyers, and paralegal and legal assistants." The most significant source of training for law

clerk is a bachelor's degree.

With regard to paralegals, the 2002-2003 edition of the *Handbook* on page 214 states the following:

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 presently cases in court.

With regard to academic credentials, the *Handbook* indicates that educational standards for paralegals appear to be rising. On page 213, it states: "While some paralegals train on the job, employers increasingly prefer graduates of postsecondary paralegal education programs, especially graduates of 4-year paralegal programs or college graduates who have completed paralegal certificate programs."

It should be noted that neither the *Handbook's* brief mention of academic requirements for law clerks or its more detailed description of the academic credentials for paralegals identifies any specific bachelor's degree for entry into either job category. 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.

Furthermore, while the dictionary excerpts and letters submitted by the petitioner clearly establish that law clerks can be employed by another attorney or a judge, the duties of the proffered position as described by the petitioner are not sufficiently clear to establish that the proffered position is that of law clerk rather than paralegal. For example, the record is devoid of any information that would establish that paralegals could not also strategize with an attorney over the facts of a case, or legal proceedings. The fact that the petitioner employs paralegals who apparently are attending law school and could also qualify for the proffered position also adds ambiguity to the academic requirements for entry into the position. Without more persuasive testimony, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 law clerk and paralegal positions were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner submitted letters from several law firms who were soliciting for law clerks for either summer hires or temporary research positions. Since the proffered position is neither a summer hire nor a temporary research position, these solicitations do not establish any industry standard for similar positions within similar firms. In addition, the hiring requirements by appellate court judges for law clerks does not appear to have any relevance to the instant petition. In addition, the petitioner submitted no documentation that any professional law association has made a bachelor's degree in a specific specialty a requirement for entry into the field. 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 a job description for the proffered position and then provided more additional information in its response to the director's request for further evidence. Neither description established that the proffered position involved 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)

The petitioner stated that all law clerks in its office possessed either a law degree or were graduates with four-year baccalaureate degrees with at least one year of training in the law. To establish this assertion, the petitioner submitted an Internet roster for its staff, and also identified its present law clerks in its letter in response to the director's request for evidence. Nevertheless, the petitioner provided confusing

testimony with regard to its academic requirements. For example, the Internet roster submitted by the petitioner and dated August 15, 2002, does not identify Mr. Milen Saev as a law student, while the petitioner's letter, dated August 16, 2002, clearly states that Mr. Saev has a law degree from Vanderbilt University Law School. Of more probative weight in this proceeding in the face of such conflicting documentation, would be a copy of Mr. Saev's academic diploma(s). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, as stated previously, the statute establishes that the petitioner must show that the proffered position requires a baccalaureate degree or higher, or the equivalent, in a specific specialty. The three law clerks listed by the petitioner have baccalaureate degrees in rhetoric, economics and business administration. Without more persuasive evidence, the petitioner has not established that it normally requires a baccalaureate degree in a specific specialty for its law clerk positions.

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)

The petitioner has not placed sufficient information on the record with regard to the specialized and complex nature of the proffered position. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that any of the four criteria 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.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.