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U.S. Department of Homeland Security
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Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**

[Redacted]

FILE: EAC 02 274 51380 Office: VERMONT SERVICE CENTER Date: **MAR 11 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:

[Redacted]

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.

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 in its antitrust division. 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 submits a brief and further 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.

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 director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) 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 in its antitrust division. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and counsel's September 19, 2002 letter in response to the director's request for further evidence. According to the initial

petition, the beneficiary would perform duties that entail: preparing legal documents, investigating facts as well as conducting legal research. In its response to the director's request for further evidence, the petitioner submitted a more substantive description that detailed the following duties and responsibilities: researches and analyzes international law sources such as statutes, recorded judicial decisions, legal articles, treaties, constitutions, and legal codes; prepares legal documents such as antitrust filings; assists with document review, organization and production; maintains case files; maintains international antitrust library; investigates facts and law of case to determine causes of action; assists in counseling of domestic and international clients; assists in merger clearances; assists in investigations and litigation before international antitrust tribunals; and assists with other litigation and transactional matters. The petitioner indicated that a bachelor's degree from a four-year college or university as well as experience or education in international antitrust was required for entry into the position.

The director found that the proffered position was not a specialty occupation and referred to the description of paralegal in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2000-2001 edition. Based on this document, the director noted that a wide range of educational backgrounds are considered suitable for entry into paralegal positions. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that large law firms with a specialty in antitrust law require a bachelor's degree in law or any bachelor degree plus substantive knowledge of antitrust law. Counsel submits a letter entitled "Professional Position Evaluation" from [REDACTED], Assistant Professor of Business Law, Department of Accounting, Taxation and Business Law, Hofstra University. Ms. [REDACTED] states that antitrust law, and the regulations and common law precedent comprising the analysis of antitrust issues, is one of the more technically complex areas of law. She also states that the proffered position could be distinguished from that of a standard paralegal position due to the advanced responsibilities in legal research and analysis and the highly technical nature of the antitrust law. Ms. [REDACTED] further asserts that large corporate law firms, such as the petitioner, hire individuals for just such antitrust positions who possess a baccalaureate degree in legal studies or a related discipline.

Counsel also submits two letters from two companies that recruit antitrust paralegals for large law firms in the Washington, D.C. area. [REDACTED], a managing partner and attorney at Continuum Legal, states that their candidates for placement in large law firms are required to have either an undergraduate degree (and sometimes a paralegal certificate), as well as substantive knowledge of antitrust issues, or they may be required to have an advanced degree, such as a bachelor's of law or a law degree, with or without the specific antitrust background. [REDACTED], an associate with Pat Taylor & Associates, Inc., states that large law firms in Washington, D.C., when hiring paralegals for antitrust work, require either an undergraduate bachelor's degree with antitrust experience or a bachelor of law degree, an LLM, or law degree with or without the antitrust background. She further states that law firms require this level of education because of the attention to detail required to perform the job and because the candidate needs to have the ability to read and understand a significant number of documents as to relevancy and also has to review privileged documents.

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 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 nor 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. Thus, the *Handbook* does not establish that the proffered position requires the minimum of a baccalaureate degree in a specific specialty for entry into the position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted eight job advertisements for paralegal positions in either the Washington, D.C. metropolitan area or in suburban Virginia and Maryland locations. None of these job vacancies listed a baccalaureate degree in a specific specialty for entry into the position. In addition, it should be noted that eight job advertisements from one specific geographic location does not necessarily establish an industry-wide standard. With regard to the position evaluation document submitted by Ms. [REDACTED], her assertion that the proffered position would require a candidate to possess a bachelor's degree in legal studies or a related field is not substantiated by any other documentary evidence. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the documentation submitted by the petitioner with regard to the academic credentials of its present paralegals, which is discussed further in this proceeding, refutes Ms. [REDACTED] assertions and suggests that the petitioner does not require a bachelor's degree in legal studies for entry into the position. The record also does not include any evidence from a professional legal association regarding an industry standard. Without more persuasive evidence, the petitioner has not established that parallel positions in similar firms require a bachelor's degree in a specific specialty.

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, in its response to the director's request for further evidence, provided a list of academic disciplines for its present staff of 24 paralegals and five project assistants. These disciplines listed ranged from linguistics, English, biology, French, political science and psychology to physiological psychology, and ethnic studies. Only one individual listed has a bachelor's degree in an area that

included studies in legal institutions. Furthermore, the petitioner provided no further documentation, such as diplomas, or proof of employment to further substantiate its assertion as to the academic credentials of its paralegal employees. As stated previously, going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, id.* Based on this documentation, the petitioner has not established that it requires individuals hired as paralegals to possess a bachelor's degree in a specific specialty.

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 submitted a generic description of the position in its original petition. In its response to the director's request for further evidence, it submitted a much more expansive description of the beneficiary's responsibilities in the petitioner's corporate department, and its antitrust practice. The duties more specific to the antitrust practice involve assisting in the legal work of antitrust attorneys, some of which would take place in international judicial venues. Other duties consisted of maintaining case files, preparing legal documents, and supervising project assistants. Many of these duties appear to be the same duties performed by any other paralegal. As such they are not viewed as duties that are either specialized or complex. Without more persuasive evidence, 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.