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U.S. Citizenship  
and Immigration  
Services



FILE: WAC 02 182 50112 Office: CALIFORNIA SERVICE CENTER Date: **MAR 15 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

INSTRUCTIONS:

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 director of the service center 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 practice that seeks to employ the beneficiary as a law clerk. 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 additional evidence.

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 law clerk. Evidence of the beneficiary's duties includes: the Form I-129; the letter accompanying the Form I-129; and the petitioner's response to the

director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: researching the law; investigating facts; preparing and proofreading documents; writing memorandums; and translating documents into the Korean language. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in English or a J.D. in law.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Citing the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director determined that the beneficiary's duties correspond to those of a paralegal, and that no evidence in the *Handbook* indicated that a bachelor's degree would be required for a paralegal position.

On appeal, counsel contends that the petitioner has satisfied the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

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)).

Counsel claims that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The beneficiary's most important duties, counsel states, will be to prepare legal documents and communicate with clients. According to counsel, the 2002-2003 edition of the *Handbook* reveals that law clerks perform these duties. Moreover, counsel states that a law clerk exercises a higher level of critical thinking and analysis compared to a paralegal. Counsel, for example, states that a law clerk performs legal analysis, drafts memoranda, evaluates and examines information provided by clients, and is concerned about substantive matters; whereas a paralegal's work focuses on procedural matters, and gathering information to complete boilerplate forms. Counsel claims that the critical thinking and writing required of a law clerk is usually associated with a college-level curriculum emphasizing extensive reading and writing.

Counsel's claims are not persuasive. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. According to the *Handbook*, a law clerk assists lawyers or judges by researching or preparing legal documents, meeting with clients, or assisting lawyers or judges in court. Although the *Handbook* indicates that a bachelor's degree is required for a law clerk position, the *Handbook* does not indicate that a degree in a specific specialty is required. A further review of the *Handbook* reveals that the duties of the proffered position mirror those of a paralegal and an interpreter and translator. The *Handbook*

explains that paralegals help lawyers prepare for closings, hearings, trials, and corporate meetings. They investigate the facts of cases and ensure that all relevant information is considered. They identify appropriate laws, judicial decisions, legal articles, and other materials that are relevant to assigned cases. After they analyze and organize the information, the *Handbook* reports that paralegals may prepare written reports that attorneys use in determining how cases should be handled. Paralegals may help prepare legal arguments, draft pleadings, and motions to be filed with the court, obtain affidavits, and assist attorneys during trials. In small and medium-sized law firms, the *Handbook* states that paralegals perform a variety of duties that require a general knowledge of the law. Moreover, the *Handbook* explains that a paralegal exercises not only a high level of critical thinking and analysis, but also performs responsibilities that far exceed merely completing boilerplate forms. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a paralegal position. Consequently, the petitioner fails to establish the first criterion.

With respect to translators and interpreters, the *Handbook* explains that these positions translate or interpret written, oral, or sign language text into another language for others. The *Handbook* conveys that the most significant source of training is long-term on-the-job training. Consequently, the first criterion is not established because a bachelor's degree is not required for translating and interpreting duties.

To establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations - counsel claims that the previously submitted copies of employment notices and written statements confirm the bachelor's degree requirement.

Counsel's evidence, however, is insufficient to establish the second criterion. With respect to the employment notices, none of the notices describe in any detail the duties of the advertised position. Some of the advertisements do not require a bachelor's degree and only one advertisement requires a bachelor's degree in a specific specialty. Thus, the notices are not adequate to establish a degree requirement in the industry. The other evidence consists of letters from Squire, Sanders & Dempsey L.L.P and [REDACTED]. The letter from Squire, Sanders & Dempsey L.L.P stated that an appropriate degree, such as a bachelor's degree in English literature, is very desirable, if not essential, for a law clerk/paralegal position. The letter claimed that most of the company's paralegals and law clerks in the San Francisco office hold bachelor's degrees. The letter from Mr. [REDACTED] averred that a law clerk, paralegal, and legal assistant possess at least a bachelor's degree, and that most attorneys prefer their assistants to hold a bachelor's degree in English or a related field because other bachelor's degrees do not confer the necessary writing and analytical reading skills. The letter further declared that all of the letter writer's current and former legal assistants and law clerks have possessed at least a bachelor's degree in English or a related field.

Although the letters are relevant, two letters are insufficient in themselves to establish an industry norm of a bachelor's degree requirement. The letter writers, furthermore, submit no independent evidence to substantiate their assertions. Thus, the assertions merit little weight. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Notably, both letters indicate that employers do not require a bachelor's degree in a specific specialty. For example, the letter from Mr. Fagiani stated that most attorneys prefer (but do not require) that assistants hold a bachelor's degree in English or a related field. As previously discussed, 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.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree.

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that it normally requires a degree or its equivalent for the position. The petitioner's letter, dated April 22, 2002, stated that it has been requiring at least a bachelor's degree in English or law for a law clerk position. However, 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. CIS 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 (5<sup>th</sup> 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 baccalaureate or higher 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 CIS were 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 baccalaureate or higher degrees. *See id.* at 388. Consequently, the petitioner fails to establish that it normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific 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. According to counsel, a law clerk exercises a high level of critical thinking and legal analysis: a law clerk drafts memoranda, evaluates and examines information provided by clients, and is concerned about substantive matters. Counsel claims that a legal clerk's skill in critical thinking and ability to write is associated with the attainment of a college-level curriculum that emphasizes extensive reading and writing.

The AAO finds that counsel's claims are not sufficient in establishing the fourth criterion. As already related, the beneficiary's duties mirror those of paralegals and the *Handbook* explicitly states that a bachelor's degree is not required for a paralegal position. Consequently, the petitioner fails to establish the fourth criterion.

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.

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<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." *See id.* at 387.