

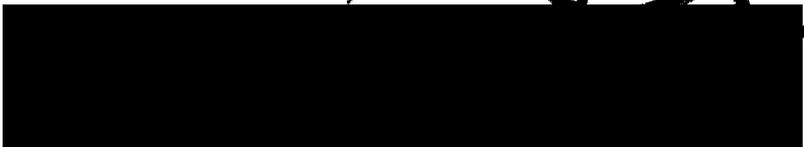
U.S. Citizenship  
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MAR 22 2004

FILE: SRC 02 170 54116 Office: TEXAS 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 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 an international paralegal consulting/services 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 petitioner failed to establish that the proffered position is a specialty occupation. On appeal, the petitioner submits a brief and previously submitted 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 paralegal. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's April 24, 2002 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: managing and coordinating business operations; supervising employees; monitoring workflow and accounts payable/receivable; responding to customer requests; researching laws such as statutes, judicial decisions, and legal articles; investigating facts; preparing legal documents such as briefs, pleadings, appeals, wills, contracts, and articles of incorporation; appraising and preparing inventories on real and personal properties for estate planning; and filing and monitoring visa petitions and applications. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in law, business administration, financial management, or a related field, and would be bilingual.

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 stated that although there are several ways to become a paralegal/legal assistant, employers usually require formal paralegal training obtained through an associate or bachelor's degree program or a certification program. The director noted that the *Handbook* explains that, increasingly, employers prefer graduates from four-year paralegal programs or college graduates who have completed paralegal certificate programs, and that some employers prefer to train paralegals on the job, hiring college graduates with no legal experience or promoting experienced legal secretaries.

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

First, the AAO considers 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 petitioner claims that it satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) on the ground that its submitted job openings for paralegal positions establish that a baccalaureate or a higher degree or its equivalent is normally the minimum requirement for entry into the occupation. The petitioner, moreover, cites the Department of Labor's *Dictionary of Occupational Titles* (DOT) to state that the alternate title - law clerk - also applies to a paralegal, and that the definition of the term "law clerk" is a law school graduate who assists judges, magistrates, and lawyers in legal research and analysis.

The petitioner's claims are without substance. 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. Thus, the title of the position – whether paralegal or law clerk - will not dictate whether a position qualifies as a specialty occupation under the first criterion.

Furthermore, with respect to the *DOT*, the Department of Labor 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 Department of Labor'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 and advance within an occupation. Consequently, the AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

A review of the *Handbook* reveals that the director correctly found that the proffered position resembles a paralegal, and that no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, in a specific specialty is required for a paralegal position.

With respect to the submitted job openings, some of the openings state that a bachelor's degree is "preferred"; however, a mere preference is not synonymous to a requirement. Other postings accept either a bachelor's degree or a paralegal certificate or bachelor's degree or an associate's degree. None of the openings require a bachelor's degree in a specific specialty; as such, it is important to note that 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.

To establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations – the petitioner asserts that the submitted job postings demonstrate that a bachelor's degree is common in the industry in parallel positions among similar organizations. The petitioner also asserts that the *Handbook* reports that employers usually require formal paralegal training obtained through associate and bachelor's degree programs, and that increasingly, employers prefer to hire graduates of four-year paralegal programs or college graduates. Thus, the petitioner asserts that the *Handbook's* finding contradicts the director's statements and reaffirms the petitioner's assertion that a baccalaureate degree is common to the industry.

The AAO finds that the petitioner's assertions are without merit. Given the deficiencies previously related about the postings, it is evident that the requirement a bachelor's degree is not common to the industry. Furthermore, the *Handbook's* findings explicitly substantiate that a bachelor's degree is not usually required for a paralegal job: employers accept certification programs and associate and bachelor's degree programs. Although some employers may prefer to hire graduates of four-year paralegal programs or college graduates, this does not establish that that requirement of a bachelor's degree is common to the industry.

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 AAO now turns to 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 asserts that it has a history of employing university-educated

professionals for paralegal/legal assistant positions, and the petitioner submits a copy of: (1) an educational evaluation for [REDACTED] (2) [REDACTED] diploma and its translation; and (3) a document from the [REDACTED]

The AAO is not persuaded that the position is a specialty occupation simply because the petitioner claims that a degree is required. The director correctly stated that 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. As already related, the responsibilities and duties of the proffered position would not require a bachelor's degree.

Another of the petitioner's claims is 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 the petitioner, the paralegal will assist and work side-by-side with lawyers, heads of corporate legal departments, and government officials on legal matters.

The AAO finds that the petitioner's claims are not sufficient in establishing the fourth criterion. The petitioner's description of the issues that will be addressed by the paralegal, and the role of the paralegal *vis-a-vis* to counsel and others is analogous to the role of the paralegal as described in the *Handbook*. Thus, the nature of the specific duties is not so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree.

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.