

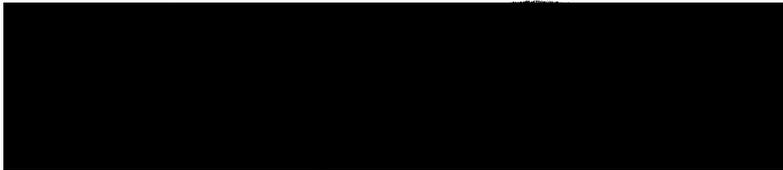
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 221 53350 Office: CALIFORNIA SERVICE CENTER Date: SEP 22 2005

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 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 legal administrator. The petitioner 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, the petitioner submits a brief.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

Section 214(i)(1) of 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 legal administrator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 25, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: overall day-to-day operations of the firm, including financial and budget planning and controls, personnel administration, systems and physical facilities; managing finances and budget, including planning, forecasting, budgeting, financial reporting, general ledger accounting, payroll, and cash flow control; human resource management, including recruiting, selection, training and development, performance evaluation, salary administration, employee relations and other human resource management functions for the legal, paralegal and support staff; developing working understanding of complex office equipment, technologies and systems; planning space and design; ensuring cost efficiency for office supplies; controlling inventory; directing research for attorneys; supervising legal researcher to ensure accurate research materials are submitted to the attorney; assigning duties and examining work done for accuracy and conformance to standards; directing preparation and filing of corporate legal documents with government agencies to conform with statutes; marketing legal services and enhancing the firm's visibility and image in the desired markets; performing liaison work, planning conferences between attorneys and clients; possibly representing the office in depositions, mediations and trial monitoring; translating legal documents and memoranda to, from and on behalf of clients to and from [REDACTED] and [REDACTED] and assisting attorneys to meet and confer with [REDACTED] and [REDACTED] speaking clients. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director found that the proffered position was not a specialty occupation because the job is a combination of office manager, administrator, human resources manager, accounting clerk, and marketing/public relations manager, positions that do not require a bachelor's degree in a specific specialty for entry into the position. 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, the petitioner states that the proffered position is most like a chief operating officer, and that the director disregarded the complexity of the position. The petitioner also states that all of the postings submitted for comparable legal administrator positions indicated that a bachelor's degree was required. The petitioner asserts that the proffered position qualifies as a specialty occupation under all four of the regulatory criteria.

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 Department of Labor's *Occupational Outlook Handbook (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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. 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. As the petitioner noted, the duties of the position are most like those of a chief operating officer, which is described in the *Handbook* entry under top executives. No evidence in the *Handbook* indicates that a baccalaureate or higher degree or its equivalent in a specific specialty is required for a top executive position. The *Handbook* does indicate that a bachelor's degree is normally required for top executives, however, that degree could be in a wide range of specialties. As discussed above, CIS interprets the degree requirement to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted numerous Internet job postings for legal administrators, firm administrators, office managers and directors. While almost all of the postings indicated that a bachelor's degree was required, few of them stated that the degree had to be in a specific specialty. Thus, the petitioner has not established that the industry standard requires a bachelor's degree in a specific specialty.

The record includes information from a professional association, which states that a legal administrator should have "[g]raduation from a recognized college or university with major course work in business administration or management, finance, human resources, technology or marketing, or comparable work experience." The broad range of degrees does not reflect that the standard in the industry is that a degree must be in a specific specialty. The documentation does not 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. While the petitioner states that all of its employees hold degrees, the proffered position is a new position; therefore, the petitioner is not able to meet this criterion. In addition, the petitioner stated that a bachelor's degree was required, but did not specify a field of study. It is noted that the beneficiary has the equivalent of a degree in interior design; thus, the petitioner does not require that the degree be in a related specialty. As noted, there must be a close corollary between the required specialized studies and the position for the position to qualify as a specialty occupation.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. On appeal, the petitioner states that the beneficiary has worked as a legal administrator for more than one year and as an assistant legal administrator for almost two years, as well as having a number of years of experience in other positions that are relevant to the proffered position. The petitioner submitted a credentials evaluation stating that the beneficiary has the equivalent of a bachelor's degree in interior design from a U.S. university, but did not provide evidence that the beneficiary's work experience and training is equivalent to a bachelor's degree in any specific specialty other than interior design. As the *Handbook* indicates that the degree may be in any of a wide range of specialties, the beneficiary is qualified for the position. The petition may not be granted, however, as the position is not a specialty occupation.

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.