

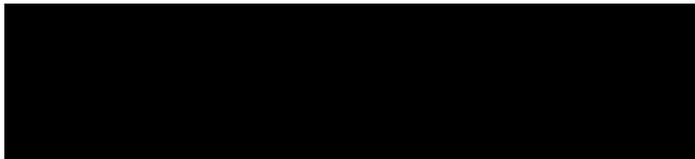
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529



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

PUBLIC COPY



Dz

FILE: EAC 04 262 50949 Office: VERMONT SERVICE CENTER Date: **JUN 06 2006**

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a law firm. It seeks to employ the beneficiary as a legal assistant and to classify her 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 on the ground that the proffered 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.

As provided in 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 notice of decision; and (3) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a law firm specializing in immigration law, nationality issues, and international business law. In its Form I-129 the petitioner stated that it was established in 1977, has

seven employees and gross annual income of \$750,000, and proposed to employ the beneficiary as a legal assistant for three years, at an annual salary of \$31,000, to “conduct research into legal issues relevant to immigration law as well as trusts and estates, federal court practice, human rights law, litigation and employment law, perform legal analysis, write legal memoranda, and meet with clients.” In an accompanying letter the petitioner provided a more detailed description of the proffered position:

[The beneficiary] will work in the area of immigration and nationality issues as well as international business law and other law areas relevant to our foreign national clientele. She will conduct research regarding legal issues of import to our work including the legal transfer of key employees for international corporations and foundations and obtaining visas permitting temporary employment in the United States on behalf of major international companies and foreign banks. [The beneficiary] will research issues relevant for our litigation cases, conducting research on multiple issues including labor law, discrimination, corporate and business conduct as well as international business practices. She will also be required to analyze international tax and worldwide business issues and international commerce. She will analyze laws, regulations and case laws, organize the information and prepare written reports and memoranda of law. She will also aid the petitioner in dealing with the immigrant and non-immigrant visa petitions for permanent residence through the family relationships and draft various visa applications in all of the non-immigrant categories, both at the inception and for extensions. She will use legal research software packages, Internet resources, as well as our internet-based case management system. [The beneficiary] will also be required to meet with clients and help with discovery issues.

The record shows that the beneficiary, a native of Poland, earned a master of laws degree from the University of Warsaw on June 29, 2001, then came to the United States on an F-1 student visa and earned a master of laws degree at Indiana University on December 20, 2003. Based on her educational qualifications the petitioner states that it hired the beneficiary in March 2004 to perform the duties of the proffered position.

The director determined that the proffered position is not a specialty occupation. The director found that the duties described by the petitioner reflected the duties of a paralegal or legal assistant, as described in the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, an occupation for which a baccalaureate level of training in a specific field of study is not routinely required. The petitioner did not claim that the legal assistant position requires a degree in a specific specialty, the director noted, and the evidence of record did not show that a degree in a specific specialty is the normal, industry-wide minimum requirement for entry into such a position. The director determined that the proffered position does not meet any of the statutory or regulatory criteria of a specialty occupation.

On appeal counsel reiterates the duties performed by the legal assistant and asserts that they require at least a bachelor’s degree to perform. According to counsel, the DOL *Handbook* fails to distinguish between the different levels of paralegals/legal assistants, some of whom perform mundane and largely administrative tasks and others of whom perform sophisticated legal tasks. The proffered position fits in the latter category, counsel contends, and requires at least a bachelor’s degree.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The duties of a legal assistant, or paralegal (the titles are used interchangeably in the DOL *Handbook*), are described in the *Handbook*, 2006-07 edition, in pertinent part, as follows:

While lawyers assume ultimate responsibility for legal work, they often delegate many of their tasks to paralegals. In fact, paralegals – also called legal assistants – are continuing 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 that are considered to be the practice of law, such as setting legal fees, giving legal advice, and presenting cases in court.

One of a paralegal's most important tasks is helping lawyers prepare for closings, hearings, trials, and corporate meetings. Paralegals investigate the facts of cases and ensure that all relevant information is considered. They also identify appropriate laws, judicial decisions, legal articles, and other materials that are relevant to assigned cases. After they analyze and organize the information, paralegals may prepare written reports that attorneys use in determining how cases should be handled. Should attorneys decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments, draft pleadings and motions to be filed with the court, obtain affidavits, and assist attorneys during trials. Paralegals also organize and track files of all important case documents and make them available and easily accessible to attorneys.

....

The duties of paralegals also differ widely with the type of organization in which they are employed

The duties of paralegals who work in the public sector usually vary within each agency. In general, paralegals analyze legal material for internal use, maintain reference files, conduct research for attorneys, and collect and analyze evidence for agency hearings. They may prepare informative or explanatory material on laws, agency regulations, and agency policy for general use by the agency and the public

Paralegals in small and medium-size law firms usually perform a variety of duties that require a general knowledge of the law Paralegals employed by large law firms, government agencies, and corporations, however, are more likely to specialize in one aspect of the law.

Familiarity with computers use and technical knowledge have become essential to paralegal work. Computer software packages and the Internet are used to search legal literature stored in computer databases and on CD-ROM

The foregoing description of the duties performed by legal assistants, or paralegals, accords closely with the duties of the proffered position. With respect to the educational requirements of the occupation, the *Handbook, id.*, states as follows:

There are several ways to become a paralegal. The most common is through a community college paralegal program that leads to an associate's degree. The other common method of entry, mainly for those who already have a college degree, is through a program that leads to a certification in paralegal studies. A small number of schools also offer bachelor's and master's degrees in paralegal studies. Some employers train paralegals on the job, hiring college graduates with no legal experience or promoting experienced legal secretaries. Other entrants have experience in a technical field that is useful to law firms, such as a background in tax preparation for tax and estate practice, criminal justice, or nursing or health administration for personal injury practice.

Handbook, at 212. As indicated in the *Handbook*, a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into a legal assistant position. A two-year associate's degree in paralegal studies is a common educational degree for entry-level legal assistants. In addition, experience in a relevant technical field and/or completion of a paralegal certification course are highly regarded qualifications by some employers. Though some paralegals have college degrees, most employers do not require that they be in paralegal studies or any other specific specialty. With respect to the other DOL occupational resources cited by counsel on appeal – including the OES (Occupational Employment Statistics) Guidelines and Job Zone categories with their SVP (Special Vocational Preparation) ratings for individual occupations – they do not indicate that a baccalaureate or higher degree in a specific specialty is required to obtain a paralegal, or legal assistant, position. Accordingly, the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), there is no evidence in the record that a specialty degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Nor does the documentation of record demonstrate that the legal assistant position at issue in this petition is so complex or unique that it can only be performed by an individual with a specialty degree. Thus, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With regard to the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3) – “the employer normally requires a degree or its equivalent for the position” – counsel asserts that the petitioner employs paralegals without “high educational achievements” who perform lower-level work than that performed by the legal assistant at issue in this petition. (In contrast to the *Handbook*, the petitioner apparently treats paralegals and legal assistants as different positions.) Although the petitioner claims that it employs two legal assistants (including the proffered position), it has not identified the other individual, has not submitted documentary evidence of his or her employment with the firm and in what capacity, and has not identified or provided evidence of the employee's educational degree. Simply going

on record without supporting documentation does not satisfy the petitioner's burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO concludes that the proffered position does qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) because the record does not show that the petitioner normally requires a specialty degree or its equivalent for the position.

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not demonstrate that the duties of the position are so specialized and complex that they require a body of knowledge associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties of the job, as described by the petitioner, do not exceed those typically performed by a legal assistant in a U.S. law firm. The petitioner has not provided persuasive evidence that the body of knowledge required for such a job could not be acquired by means of an associate's degree or a certificate in paralegal studies, or through on-the-job training and experience following baccalaureate studies in an unrelated field. The AAO concludes that the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the proffered position does not qualify as a specialty occupation under any of the criteria enumerated under 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.