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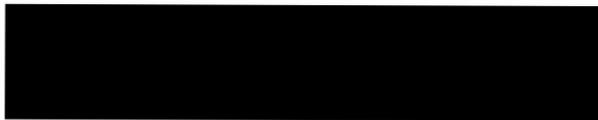
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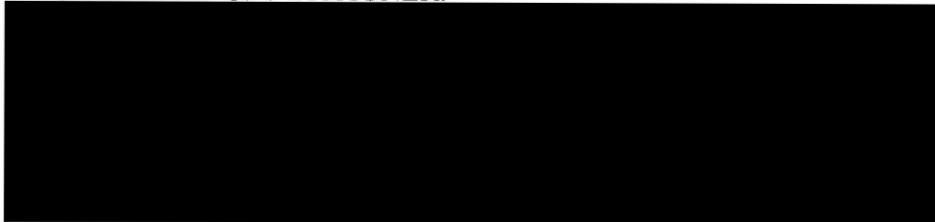
FILE: EAC 04 258 53029 Office: VERMONT SERVICE CENTER Date: JUN 23 2006

IN RE:



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:



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.

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

Robert P. Wiemann, Chief
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 provides home, energy, and security monitoring through web-enabled devices. It seeks to employ the beneficiary as a paralegal (contracts analyst). 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.

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) the 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 (contracts analyst). Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail drafting contracts that maximize the interests of the company; reading and reviewing contracts; conducting research and gathering necessary data for drafting contracts; researching international trade, tax, and intellectual property laws; working with the intellectual property manager and research and development teams; preparing memoranda for senior officers outlining advantages and disadvantages of contract terms; preparing revenue projections based on contract terms and sales; writing advisories on international trade law and changes and their effects on contracts in play; obtaining patents and trademarks for the petitioner's inventions; organizing and maintaining clients' files; identifying missing information. The petitioner asserts that it requires a bachelor's degree for the proposed position.

The director stated that the proposed position resembles a paralegal as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this occupation does not require a bachelor's degree in a specific academic specialty. The director found the submitted job postings unpersuasive in establishing the offered position as a specialty occupation.

On appeal, counsel states that the beneficiary will draft and review contracts and that counsel will finalize them. Counsel asserts that the offered position is similar to that of a law clerk, and that the *Handbook* describes a law clerk as assisting lawyers or judges by researching or preparing legal documents. Counsel asserts that the proposed duties are more advanced than the duties of a paralegal as that occupation is described in the *Handbook* as the beneficiary will draft contracts and memoranda that require knowledge of law, trade, contracts, and business and an understanding of the petitioner's capabilities in production, distribution, and asset management. Counsel contends that the offered position requires more than an associate's degree. Counsel maintains that the director's failure to consider the job postings was arbitrary and capricious. Counsel states that because many of the job postings require a bachelor's degree and substantial work experience, they establish the offered position as a specialty occupation. According to counsel, the petitioner states that its educational requirement protects the company from legal liability and contractual enforcement issues. Counsel discusses the two contracts that were previously submitted into the record.

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 first 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 2006-2007 edition of 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, 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.

Counsel's assertion that the proposed duties exceed those of a paralegal is not persuasive. The AAO finds that the proposed duties are encompassed within those of a paralegal. The *Handbook*, a resource that the AAO routinely consults for information about the duties and educational requirements of particular occupations, states the following about a paralegal:

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.

In addition to this preparatory work, paralegals perform a number of other vital functions. For example, they help draft contracts, mortgages, separation agreements, and instruments of trust. They also may assist in preparing tax returns and planning estates. Some paralegals coordinate the activities of other law office employees and maintain financial office records. Various additional tasks may differ, depending on the employer.

Paralegals are found in all types of organizations, but most are employed by law firms, corporate legal departments, and various government offices. In these organizations, they can work in many different areas of the law, including litigation, personal injury, corporate law,

criminal law, employee benefits, intellectual property, labor law, bankruptcy, immigration, family law, and real estate. As the law has become more complex, paralegals have responded by becoming more specialized. Within specialties, functions often are broken down further so that paralegals may deal with a specific area. For example, paralegals specializing in labor law may concentrate exclusively on employee benefits.

Based on the *Handbook's* information, paralegals draft contracts and work in the area of law dealing with intellectual property, which are the areas of law that the beneficiary will be concerned with. The AAO notes that the record contains two contracts and information reflecting that the petitioner filed several patents. The record also contains company brochures, and an organizational chart which reflects that the petitioner uses the services of a corporate attorney.

Counsel asserts that the offered position requires more than an associate's degree. However, the *Handbook* indicates that a baccalaureate degree is not required for a paralegal, which is the occupation that is similar to the offered position. The *Handbook* states:

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 or in criminal justice, nursing, or health administration for personal injury practice.

The AAO's conclusion, from the evidence to which it has referred, is that the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submits job postings. The postings are not persuasive, however, as they are from companies that differ in nature from the petitioner, a small company that provides home, energy, and security monitoring through web-enabled devices.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier in this decision, the duties of the proposed position reflect those of a paralegal that specializes in intellectual property such as patents, which is an occupation that the *Handbook* reveals does not require a baccalaureate degree in a specific specialty.

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. No evidence in the record establishes that the beneficiary's duties rise above those performed by a paralegal, as that occupation is depicted in the *Handbook*. Consequently, the petitioner fails to establish the fourth criterion at 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 on this ground.

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.