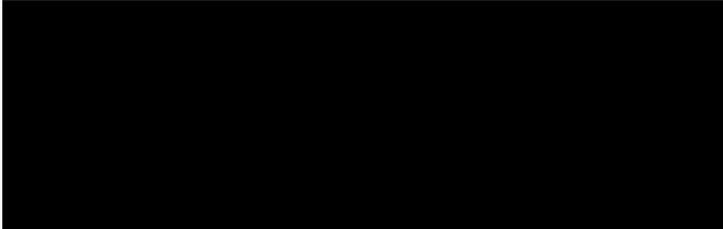




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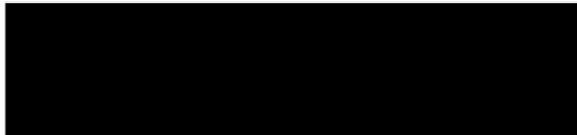
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FILE: LIN 04 080 51731 Office: NEBRASKA SERVICE CENTER Date: **MAR 27 2006**

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.

for Michael T. Kelly
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 firm 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 on the ground that: (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified for a law clerk position. On appeal, counsel submits a brief.

The AAO will first consider the director's finding that the proposed position fails to qualify as 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 director's denial letter; and (4) 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 assistant. 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 request for evidence. According to this evidence, the beneficiary would perform duties that entail: assisting in the representation of clients in court; researching laws and cases, investigating facts, and preparing legal documents and correspondence; filing pleadings; preparing office accounts and tax returns; handling client relations and client development; managing case dockets; meeting and managing clients during court; and preparing and coordinating legal files. For the proposed position the petitioner requires at least a bachelor's degree in pre-law, business, history, accounting, English, or a related degree.

In denying the petition, the director stated that the proposed duties are a combination of those of a paralegal and a bookkeeper as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reveals that those occupations do not require a baccalaureate degree in a specific specialty. The director found the submitted job postings and information from the *Dictionary of Occupational Titles (DOT)* unpersuasive in establishing that the proposed position qualifies as a specialty occupation. According to the director, nine undergraduate courses in law and a foreign degree in accounting do not qualify the beneficiary for a law clerk position. The director found that for a law clerk position the submitted job postings require at least a baccalaureate degree and one year of law school.

On appeal, counsel states that the proposed position requires a high level of writing and verbal skills, an understanding of court procedure, and the ability to analyze facts and follow instructions from an attorney. According to counsel, the proposed position is distinguishable from the *Handbook's* description of a paralegal as the beneficiary will meet with and manage clients throughout the trial process; a paralegal does not have this duty, counsel asserts. Counsel contends that a paralegal will not research case law (the beneficiary's duty), but will merely identify case law. Counsel states that the submitted job postings indicate a requirement of at least a bachelor's degree for a law clerk, and further states that a law clerk on the DOL's wage database is in Zone 4; thus, requiring a minimum of two to four years of work-related skill, knowledge, or experience. Counsel states that the petitioner is relatively new and has not previously needed a law clerk. Counsel discusses the beneficiary's qualifications for the proposed position.

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 *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 states that the *DOT* and the DOL job zone (as shown in the *Online Wage Library*) demonstrate that the proposed position qualifies as a specialty occupation. Counsel's reference to and assertions about the relevance of information from the *DOT* and the DOL job zone are not persuasive. Neither a specific vocational preparation (SVP) rating nor a job zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and job zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The AAO often consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* reveals that the proffered duties resemble those of a paralegal. In the *Handbook*, a paralegal, also called a legal assistant, is described as follows:

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 in small and medium-size law firms usually perform a variety of duties that require a general knowledge of the law. For example, they may research judicial decisions on improper police arrests or help prepare a mortgage contract. Paralegals employed by large law firms, government agencies, and corporations, however, are more likely to specialize in one aspect of the law.

Familiarity with computer 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. In litigation involving many supporting documents, paralegals usually use computer databases to retrieve, organize, and index various materials. Imaging software allows paralegals to scan documents directly into a database, while billing programs help them to track hours billed to clients. Computer software packages also are used to perform tax computations and explore the consequences of various tax strategies for clients.

The proposed duties mirror those of a paralegal. The beneficiary will assist in the representation of clients in court; research laws and cases, investigate facts, and prepare legal documents or correspondence; file pleadings; prepare office accounts and tax returns; handle client relations and client development; manage case dockets; meet and manage clients during court; and prepare and coordinate legal files. On appeal, counsel asserts that paralegals do not research case law or meet with clients. The *Handbook's* description of a paralegal encompasses the beneficiary's duties as well as other duties. The *Handbook* states that paralegals "investigate the facts of cases," "identify appropriate laws, judicial decisions, legal articles, and other materials," "prepare written reports that attorneys use in determining how cases should be handled," help "prepare the legal arguments, draft pleadings and motions to be filed with the court, obtain affidavits, and assist attorneys during trials," and "organize and track files." Paralegals also prepare tax returns, use software packages to perform tax computations, and keep track of hours billed to clients.

To qualify for a paralegal 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 have a college degree, is through a certification 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.

Based on the *Handbook's* information, the most common way to become a paralegal is to obtain an associate's degree in a paralegal program or have a college degree and obtain certification in paralegal studies. Thus, employers do not require a baccalaureate degree in a specific specialty for a paralegal position. The AAO's conclusion, based on the evidence in the record, is that the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): 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), which is that a specific degree requirement is common to the industry in parallel positions among similar organizations, the petitioner submitted job postings. The job postings are not persuasive, however. The job postings do not require a baccalaureate degree in a specific specialty for the posted positions or they require a law student, usually a student in the second year of law school. (The AAO notes that the petitioner does not require the completion of the second year of law school.) Moreover, the employers in the postings are either dissimilar in nature from the petitioner, a small law practice which the Form I-129 shows as having no employees, or their nature is not disclosed. For instance, employers that differ from the petitioner are the City of Columbia, the U.S. District Court, the Douglas County District Attorney, the U.S. Court of Appeals for the Armed Forces, Congressman Dennis Moore, The Summer Corps, the Kansas Juvenile Justice Authority, the Political Asylum Project of Austin, the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, the Kansas Department of Revenue, the City Attorney's Office of Topeka, the Lawyers' Committee for Civil Rights Under Law, and the McCleary Law Fellows Program. Employers that require at least a second year law student include: Joanna W. Owen; Blitz, Bardgett, and Deutsch, L.C.; Cunningham, Vogel and Rost, P.C.; David J. Rauscher, P.C.; and Schuchat Cook and Werner. No degree requirement is indicated in the job postings from Kopp & Bannister, PA, and Michael D. Robinson and Associates. For these reasons, the job postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence establishes the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The *Handbook* reveals that the proposed position parallels that of a paralegal (also called a legal assistant), and that this occupation does not require a baccalaureate degree in a specific specialty.

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) requires that the petitioner establish that it normally requires a degree or its equivalent for the position. The proposed position is newly created, thus, the petitioner fails to establish this criterion.

To establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) the petitioner must show 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 in a specific specialty. As discussed earlier, the *Handbook* reveals that the proposed duties mirror those of a paralegal (also known as a legal assistant), and that this occupation does not require a bachelor's degree in a specific specialty. The petitioner, therefore, fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO notes that it is not enough to state that a baccalaureate or higher degree is required for a particular position; the petitioner must show that it requires a baccalaureate degree in a specific specialty that is directly related to the proffered position. In the January 27, 2004 letter, the petitioner stated that its job requirement for the position is at least a bachelor's degree in pre-law, business, history, accounting, English, or a related degree. Given the varying academic fields that the petitioner accepts for the proposed position, ranging from history to accounting, the AAO finds that the petitioner does not require a baccalaureate degree in a specific specialty that is directly related to the proffered position. Consequently, for this additional reason, the petitioner establishes none of the criteria under 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.

The director also concluded that the beneficiary is not qualified for the proposed position. Because the AAO found that the proposed position is not a specialty occupation, whether the beneficiary is qualified for the proposed position is not relevant in this proceeding.

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.