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U.S. Citizenship
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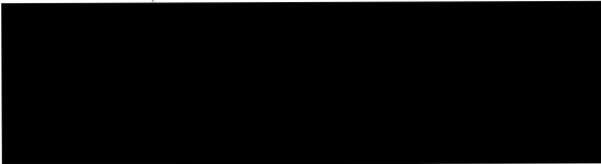
FILE: WAC 04 154 50227 Office: CALIFORNIA SERVICE CENTER Date: MAR 30 2006

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:



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 an executive assistant and endeavors to classify him 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 does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information asserting that the offered position qualifies as a specialty occupation.

The petitioner requested oral argument in these proceedings. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner has identified no unique factors or issues of law to be resolved. The written record of proceedings fully represents the facts and issues in this case. Consequently, the request for oral argument is denied.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an executive assistant. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Collect client files and make sure that they are timely processed;
- Research insurance industry websites and publications to prepare a marketing agenda and promotional material to obtain new clients;
- Interact with customers to provide requested information and resolve complaints;
- Record and analyze the firm’s financial information including financial information needed by the managing partner to make business decisions;
- Manage billing and cash receipts for the firm;
- Oversee quality control of legal files including scanning, data entry and other records management responsibilities;

- Create computerized indexes of pleadings and discovery documents;
- Close case files for offsite storage;
- Post and process vendor invoices, researching discrepancies and handling vendor inquiries in a professional manner;
- Be responsible for firm disbursements, overseeing batching and entering of data into a specialized accounting software system, proofing data, researching client and firm charges and providing management reports;
- Review documents to obtain insurance documents such as policies, additional insured endorsements, and certificates of insurance showing relevant coverage;
- Prepare tender letters to other insurers, spreadsheets accounting for tenders, responses and documents evidencing coverage;
- Prepare allocations of defense and indemnity among many insurance carriers based on formulas sanctioned by case law; and
- Document productions, exhibits, witness binders and provide case management.

The petitioner does not state that it requires a degree in a specific specialty for entry into the proffered position, but finds the beneficiary qualified by virtue of his past education and work experience which has been determined by a credentials evaluation service to be equivalent to a business administration degree with a specialization in management from an accredited college or university in the United States.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. 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 an industry 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 information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for general/operations/office managers in a law office setting, with additional duties normally performed by paralegals or other administrative staff. The *Handbook* notes that the formal education and experience of these managers varies as widely as the nature of their responsibilities. Many have a bachelor's or higher degree in business administration or liberal arts, while others obtain their positions by promotion from lower level management positions. Thus, it is possible to obtain a position as a general or operations manager

without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the offered position. Positions requiring a college degree are filled from a wide range of educational disciplines. A degree in a specific specialty, however, is not required. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) with respect to these management responsibilities.

The beneficiary would also perform tasks normally performed by paralegals or other law office staff. The *Handbook* notes that there are several ways to become a paralegal, and that employers usually require formal paralegal training through an associate/bachelor's degree, or certification program. Increasingly, employers prefer graduates of four-year paralegal programs, or college graduates with paralegal certification. Other employers, however, prefer to train college graduates with no experience, or to promote experienced legal secretaries. It is, therefore, apparent that a baccalaureate or higher degree in a specific specialty, or its equivalent, is not normally the minimum requirement for entry into paralegal positions and the petitioner has failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) with respect to these duties.

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations. In support of that assertion the petitioner submitted copies of several job advertisements, and statements from two other law firms. The advertisements submitted are for office manager/administrator positions and paralegals. Of the three advertisements submitted for office managers, two do not require a college degree. The third indicates that a degree is required, but does not indicate that the degree need be in a specific specialty. The paralegal advertisements require a bachelor's degree and/or paralegal certification, but do not require a degree in any particular specialty. The petitioner also submitted two letters from other law firms stating that they employed executive assistants or administrative managers with a college degree. Again, neither firm states that the degreed employee (no proof is in the record of the employee degrees) is required to hold a degree in a specific specialty to work as an executive assistant or administrative manager. The proof submitted by the petitioner in this regard tends to corroborate the findings of the *Handbook* with regard to the education required for these management and paralegal positions, that a degree in a specific specialty is not required. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not established that it normally requires a degree in a specific specialty for the proffered position, and offers no evidence in this regard as the position is new with the firm. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has not been established.

The petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties are routinely performed by general/operations/office managers and paralegals in the industry with education in a wide range of educational disciplines, and by those who do not have a baccalaureate level education. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

Finally, the petitioner also makes reference to the *O*Net* and *Dictionary of Occupational Titles (DOT)* to establish that the offered position normally requires a baccalaureate level education. The petitioner's assertions in this regard are not persuasive. Neither the *DOT's* SVP rating nor a Job Zone category indicate 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.

Beyond the decision of the director, the record does not establish that the beneficiary is qualified to perform the duties of a specialty occupation. The petitioner submitted an experiential evaluation from the Foundation for International Services to establish that the beneficiary's past education and work experience are equivalent to a baccalaureate level education in the United States. Credentials evaluations services may evaluate foreign education only for equivalency purposes, not work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Work experience may only be evaluated, for the purpose of determining degree equivalence, by an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The record does not establish that the beneficiary's work experience was evaluated by someone with that authority. For this additional reason, the petition cannot be approved.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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