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FILE: EAC 05 212 52509 Office: VERMONT SERVICE CENTER Date: **JUL 23 2007**

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.

James Blinzinger, for

Robert P. Wiemann, Chief
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 law clerk. 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 on September 13, 2005, concluding the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation, received on July 26, 2005; (2) the director's request for additional evidence, dated August 1, 2005; (3) counsel's response, dated August 31, 2005, to the director's request for evidence and supporting documentation; (4) the director's denial letter, dated September 13, 2005; (5) the first Form I-290B, received on October 25, 2005, and supporting documentation; (6) the director's decision, dated January 23, 2006, stating that the appeal would be rejected, but accepted as a Motion to Reopen/Reconsider, which was then denied; and, (7) the second Form I-1290B, received on February 24, 2006. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a law clerk. In the response to the director’s request for evidence, dated August 31, 2005, the petitioner described the beneficiary’s proposed duties as follows:

1. Conducting factual and/or legal research in providing assistance to attorneys. (2 hours/day)
 - Conduct researches using on-line research tool (Westlaw) and hard copy research materials regarding the issues assigned by attorneys.
 - Based on the research, draft in-house memorandum and/or briefs.
2. Communicating with clients in Korean and English in providing assistance to attorneys. (3 hours/day)
 - Attend client meetings with attorneys.
 - Translate attorneys’ explanation to Korean clients in Korean language.
 - Contact clients by phone and explain about the status of their cases.
3. Drafting legal documents in providing assistance to attorneys: (2 hours/day.)
 - Draft and type complaints, answers, motions, and other legal documents for attorneys’ review

- Fill out various kinds of legal forms for attorneys' use.
- 4. Filing the legal documents in providing assistance to attorneys. (2 hours/day.)
 - File various legal documents with the courts and/or other relevant organizations by mail or by person.

According to the job posting for the position of law clerk, placed by the petitioner on careerbuilder.com, the petitioner requires the applicants to have a Bachelor's Degree or an LLM.

On appeal, counsel contends that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) distinguishes the positions of paralegal and legal assistants, and law clerks. In addition, counsel contends that the *Handbook* states that a bachelor's degree is the law clerk's most significant source of training. Counsel also asserts that the *Dictionary of Occupational Titles (DOT)* designates the position of law clerk with a Standard Vocational Preparation (SVP) of 8 and a job zone of 4, which qualifies the position for classification as a specialty occupation. Counsel further asserts that the current paralegal employed by the petitioner has a bachelor's degree in law; thus, as a paralegal position requires a lower educational degree than a law clerk, the petitioner must require a law clerk to have a bachelor's degree. Finally, counsel contends that the position of law clerk for the petitioner is complex since it requires "extremely high level of accuracy and understanding of complicated American legal system, Korean legal system and legal language."

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 AAO find that the proffered position is not a specialty occupation.

In determining whether a proposed 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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. In reviewing the 2006-2007 edition of the *Handbook*, the AAO finds that the duties and responsibilities of the proposed position are encompassed within the *Handbook's* entry for a law clerk as discussed below.

The *Handbook* notes that the most significant source of education or training for law clerks is a bachelor's degree, but does not indicate that the degree need be in any specific specialty. As conveyed earlier in this decision, 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 proposed position. A review of the record's discussion regarding the credentials necessary in order to perform the duties of this position reveals that a baccalaureate degree *in a specific specialty* is not required.

When a range of degrees, e.g., the liberal or fine arts, or a degree of generalized title without further specialization, e.g., business administration, can perform the duties, the position does not qualify as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as

required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specific specialty. According to the petitioner's job posting for the position of law clerk, it only requires a person to obtain a Bachelor's degree or an LLM and it does not specify that the bachelor's degree must be in a specific field of study. As the petitioner finds acceptable a range of degrees, it does not appear that the petitioner requires a degree in a specific field of study. Rather, it appears as though the petitioner would find acceptable a candidate with a degree in a range of fields.

Finally, counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. The *DOT's* SVP rating does not 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 is meant to indicate only the total number of years of vocational preparation required for a particular position. An SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor specify the particular type of degree, if any, that a position would require. Accordingly, the AAO accords no weight to this information.

For all of these reasons, the AAO finds that the position does not qualify as a specialty occupation on the basis of a degree requirement under the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the website printout from www.iseek.org regarding law clerk positions which was submitted with the petitioner's response to the director's request for evidence. The petitioner contends that the website states that a bachelor's degree is required to work as a law clerk. In reviewing this document, it specifically states that "your bachelor's degree does not have to be in a specific area for you to apply to law school. You should consider a well-rounded course of study, such as liberal arts." This website does not establish a degree requirement in a specific specialty, as the AAO notes that the position of law clerk require a "bachelor's degree," with no particular field of study mentioned. Again, 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.¹ The petitioner has not established that similar organizations require a degree in a specific field of study for parallel positions.

Accordingly, the proposed position does not qualify for classification as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a demonstration that the position is so complex or unique that it can only be performed by an individual with a degree. Counsel contends that the law clerk position is more complex or unique than the general range of law clerks since the position “requires extremely high level of accuracy and understanding of complicated American legal system, Korean legal system and legal language.” The *Handbook* indicates that law clerks “assist lawyers or judges by researching or preparing legal documents.” According to the job description of the proffered position, it appears that the law clerk will have similar job duties, thus the evidence of record does not establish the proposed position as unique from or more complex than the general range of such positions. Moreover, the AAO notes that the petitioner finds acceptable a degree with a generalized title, which precludes classification as a specialty occupation under this criterion.

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner’s ability to meet this criterion, the AAO normally reviews the petitioner’s past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees’ diplomas. In its response to the director’s request for evidence, the petitioner indicated that the current law clerk has obtained a Bachelor of Science degree. The degree, however, does not specify a specific field of study. On appeal, counsel submits an Application for Alien Employment Certification for the current law clerk, which indicates that the petitioner requires the law clerk to have a bachelor’s degree in law. However, the petitioner did not submit any documentation evidencing that the current law clerk has a bachelor’s degree in law. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

In addition, on appeal, counsel asserts that the current paralegal, a position that is below the law clerk position, has obtained a bachelor’s degree in law. However, the petitioner did not submit any supporting documentation such as a copy of the degree and/or the school transcripts. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

As discussed above, the petitioner’s job positing for the position of law clerk on careerbuilder.com further evidences that the position does not require a bachelor’s degree in a specific field. The job positing only requires a bachelor’s degree or an LLM. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question.

¹ See also *Matter of Michael Hertz Associates*, 19 I & N Dec. 558 (Comm. 1988).

Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialized occupation. *See Matter of Michael Hertz Associates*, 19 I & N Dec. 558 (Comm. 1988). Again, CIS interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

While the petitioner states that a degree is required, the petitioner’s creation of a position with a perfunctory bachelor’s degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d at 384. The critical element is not the title of the position or an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations in any other way would lead to absurd results: if CIS were limited to reviewing a petitioner’s self-imposed employment requirements, then any alien with a bachelor’s degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

Accordingly, the petitioner has not established the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a petitioner establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. On appeal, counsel points to the *DOT’s* discussion of “law clerks” as proof that the duties of the proffered position meet the specialized and complex threshold established by the fourth criterion. The AAO disagrees.²

The AAO refers to the *Handbook* excerpts regarding law clerks discussed previously in this decision, which do not state that a bachelor’s degree in a specific specialty is the normal minimum entry requirement for positions such as the one proposed here. The duties of the proposed position do not appear more specialized and complex than those of the corresponding positions as set forth in the *Handbook*. The AAO finds nothing in the record to indicate that the beneficiary, in his role as a law clerk at the petitioner’s place of business, would face duties or challenges any more specialized and complex than those outlined in the *Handbook*.

Nor does counsel’s submission of the court’s holding in *Unical Aviation, Inc. v. INS*, 248 F. Supp. 2d 931 (C.D. Cal. 2002) establish the proposed position as a specialty occupation. First, the AAO notes that the court in *Unical* determined that the position proposed in that case was similar to that of a marketing

² The AAO also refers to its previous discussion regarding the inapplicability of the *DOT’s* SVP assessment to a determination of whether a particular position qualifies for classification as a specialty occupation.

research analyst, as such positions are described in the *Handbook*. Such is not the case here. In this case, the AAO agrees with the petitioner that the proposed position is similar to the corresponding position of law clerk as set forth in the *Handbook*. The *Handbook* does not support the petitioner's contention that the position is a specialty occupation.

To the extent that they are depicted in the record, the duties of the proposed position 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. Again, there is no information in the record to support a finding that the proposed position is more complex or unique than similar positions in other, similar organizations. As the *Handbook* reveals, such organizations do not normally impose a bachelor's degree requirement in a specific specialty. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Therefore, for the reasons related in the preceding discussion, the proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. The proposed position in this petition is not a specialty occupation, so the beneficiary's qualifications to perform its duties are inconsequential. Accordingly, the AAO will 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.

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