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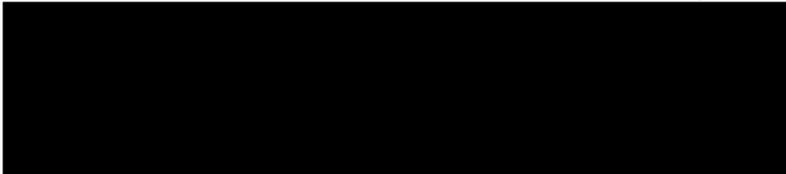
FILE: SRC 05 229 53118 Office: TEXAS SERVICE CENTER Date:

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 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*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the Texas 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 manufacturer of auto parts, with 651 employees and \$191 million in gross annual income at the time of filing. It seeks to employ the beneficiary as a paralegal/assistant to the president. 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 based on his determination that the record failed to establish the proffered position as a specialty occupation.

It is noted that on May 23, 2006, counsel notified Citizenship and Immigration Services (CIS) that while on May 22, 2006 the beneficiary was admitted to the United States on an E2 visa to work for the petitioner, the petitioner still wants to pursue its appeal of the denial of the H-1B petition filed on behalf of the beneficiary.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the 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 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:

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.

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 (5<sup>th</sup> 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 seeks the beneficiary's services as a paralegal/assistant to the president. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's August 10, 2005 cover letter in support of the petition; and the petitioner's November 10, 2005 response to the director's request for evidence. As stated by the petitioner in its August 10, 2005 letter, the proposed duties are as follows:

Utilizing her knowledge of U.S. law, she will be responsible for providing [a] variety of legal and corporate support to the President of AAC. Specifically, she will be responsible for researching and analyzing a wide variety of U.S. legislation, regulations and other legal requirements to ensure that our company's policies and procedures comply with all applicable U.S. governmental requirements. She will also analyze U.S. governmental reporting regulations and ensure that AAC files the required documents. She will be responsible for preparing and filing various legal documents with governmental agencies as required by law. She will analyze, organize, and maintain AAC's corporate and legal documents.

Additionally, she will be expected to communicate with various departments within AAC to ensure their compliance with U.S. governmental regulations. She will communicate with outside attorneys regarding various legal matters, and will seek advice from outside attorneys as needed. In performing these duties, she is expected to apply her knowledge of U.S. laws and regulations to assist the President in ensuring that AAC complies with all applicable governmental regulations. Furthermore, as the Assistant to the President, she will be required to analyze and review a large

volume of sensitive and confidential information, and to convey relevant information to the President. Finally, she will be required to manage special projects, as requested by the President.

In its November 10, 2005 response to the director's request for evidence, the petitioner states, in part, as follows:

[W]e analyzed the job duties of [the beneficiary] and realized that the external job title for this position is Specialist, Legal/Conflicts of Law Resolution.

Due to [the petitioner's] rapid expansion and cost control requirements, [the petitioner] enters into a constantly increasing number of multinational contracts, which creates a requirement to analyze and compare differences and similarities between Japanese Contract Law which is a part of Japanese Civil Law and U.S. Contract Law in order to detect and resolve possible conflicts occurring in contracts. . . . [The beneficiary] will assist [the Manager of Legal Affairs of AHA, the petitioner's mother company] by using her knowledge of both Japanese and U.S. laws in analyzing the content of contracts for conflicts between the laws of Japan and the United States, such as recall regulations, confidentiality, customs, conflict resolution, liability restitution, and statute of limitation.

[The beneficiary] is responsible for analyzing, drafting and reviewing purchase contracts between [the petitioner] and AWA [Aisin World Corporation of America], and [the petitioner] and the U.S. suppliers, technical assistance agreements with Aisin Seiki as well as sales contracts between [the petitioner] and AWA.

[The beneficiary] will spend 55% of her time analyzing the contracts and agreements and resolving conflict of law between Japanese law and U.S. law to the greatest advantage to [the petitioner].

[The beneficiary] will spend 20% of her time performing legal research and analysis of Japanese Law, as it relates to contracts with [the petitioner] and suppliers.

[The beneficiary] will spend 25% of her time reporting the results of her analysis of the contracts for conflicts between Japanese and U.S. Laws to the Manager of Legal Affairs of AHA and to the President of AHA.

As described above, the petitioner expanded the beneficiary's duties in its response to the director's request for further evidence, changing the focus of the proposed duties entirely to contract-related duties, such as: analyzing, drafting and reviewing purchase contracts; performing legal research and analysis of Japanese law, as it relates to contracts; and reporting the results of her contract analysis for conflicts between Japanese and U.S. laws. In sum, the initial description appeared to have the beneficiary performing general paralegal-related duties, such as providing a variety of legal and corporate support to the petitioner's president and researching and analyzing a wide variety of U.S. legislation, regulations, and other legal requirements to ensure that the petitioner's policies and procedures comply with applicable U.S. governmental requirements, while the second iteration of the job has the beneficiary performing entirely contract-related work.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new contract-related duties to the job description. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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 her denial, the director found that the proposed paralegal duties do not require a bachelor's degree. The director found further that, in response to her request for evidence, the petitioner changed and added additional duties to the position. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, as follows:

Unfortunately, the position title and description contained in the initial filing focused primarily on her duties related to US legal compliance and failed to fully describe the position offered to [the beneficiary] as it concerned the interplay of US and Japanese legal issues. Accordingly, in response to the request for evidence issued in this matter, [the petitioner] provided a more accurate external title of Specialist, Legal/Conflicts of Law Resolution and substantial detail concerning the unique position offered to [the beneficiary] . . .

As supporting documentation, counsel submits letters from the following: the human resources' general manager of a Japanese-owned automotive supplier; the assistant dean for graduate and joint degree programs of Washington University in St. Louis; and the presidents of two human resources providers/networks.

Counsel's statement is noted. As discussed herein, however, for the purposes of this proceeding, the job title and description of duties submitted with the initial petition will be considered.

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 turns first to 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the petitioner that the proffered position is a specialty occupation. No evidence in the *Handbook*, 2006-07 edition, indicates that a baccalaureate or higher degree, or its equivalent, is required for a paralegal job. The most common way to become a paralegal is through a community college paralegal program that leads to an associate's degree. The petitioner also has not established that the beneficiary's duties as an assistant to the president are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from a less extensive education, is necessary for the successful completion of its duties. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Regarding parallel positions in the petitioner's industry, counsel submits three letters from the representatives of a Japanese-owned automotive supplier and two human resources providers. All of these writers assert, in part, that the proffered position requires a bachelor's degree in law or legal studies. The writers base their opinions on the job of Specialist, Legal/Conflicts of Law Resolution and are thus not relevant to the job described in the initial petition.<sup>1</sup> None of them state that their firms, or their clients, require a bachelor of law degree. Nor do they provide any evidence in support of their assertions or rely on industry surveys, data or other documentation to reach the conclusion that the position requires a bachelor's degree in law or legal studies. 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)). The *Handbook* is a compilation of results of nationwide industry questionnaires, surveys and personal interviews by the DOL, and indicates that there is no specific degree requirement for entry into the field. The AAO may, in its discretion, use as advisory

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<sup>1</sup> The letter from Paul Cunagin indicates that the job duties described in the response to the RFE are not radically different from those described in the initial petition, and that the descriptions contained in both submissions are consistent with the duties of its Administrative Specialist. He offers no evidence in support of his statement. 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)).

opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Counsel also submits an academic opinion from an assistant dean for graduate and joint degree programs at a U.S. university's school of law, who asserts, in part: "I have reviewed the job description of [the beneficiary], the Specialist, Legal/Conflicts of Law Resolution, and it is my opinion that it is the industry standard that the Specialist, Legal/Conflicts of Law Resolution possess a foreign equivalent of a U.S. bachelor's degree in law." As discussed herein, for the purposes of this proceeding, the job title and description of duties submitted with the initial petition will be considered. Further, the opinion rendered by the assistant dean is not probative. Despite her self-endorsement, neither the assistant dean's letter nor any other evidence of record substantiates that she is qualified as an expert on recruiting and hiring practices related to paralegals. The record does not indicate that the assistant dean has adequate knowledge of the particular issue here. Her opinion does not include a discussion of the proposed duties and/or the actual work that the beneficiary would perform within the context of this particular petitioner's business. The professor does not demonstrate knowledge of the petitioner's particular business operations. She does not relate any personal observations of those operations or of the work that the beneficiary would perform, nor does she state that she has reviewed any projects or work products related to the proffered position. Her opinion does not relate her conclusions to specific, concrete aspects of this petitioner's business operation to demonstrate a sound factual basis for her conclusions about the educational requirements for the particular position here at issue. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion 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 does not address this issue on appeal. Further, a representative of the petitioner states in his November 10, 2005 letter that the beneficiary is the first employee to hold the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

Counsel states, on appeal, that the beneficiary "will review and analyze legal issues resulting from its continuing expansion. . . . she will review and analyze legal documents and situations and determine whether there exist conflict between US and Japanese laws and develop and recommend revisions or business solutions for [the petitioner]."

The information in the record about the proposed duties does not establish that they exceed in scope, specialization, or complexity those usually performed by paralegals and legal assistants, an occupational category for which the *Handbook* indicates no requirement for or usual association with a baccalaureate or

higher degree in a specific specialty. For example, in the *Handbook*, the DOL states, in part, that paralegals “help draft contracts” and “may prepare informative or explanatory materials on laws, agency regulations, and agency policy for general use by the agency and the public.” See the *Handbook*, 2006-2007 ed. at 207 and 208. To the extent that they are depicted in the record, the duties 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. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 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.