

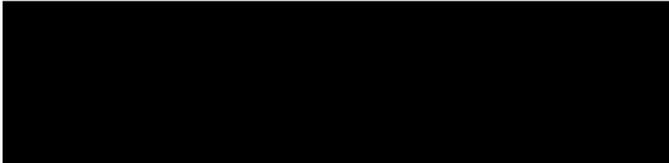
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U.S. Citizenship
and Immigration
Services

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FILE: EAC 06 201 50201 Office: VERMONT 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 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, Chief
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a law firm that seeks to employ the beneficiary as a research associate. 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 basis of her determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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 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.

In its May 5, 2006 letter of support, the petitioner stated that, in the proposed position, the beneficiary would spend twenty-five percent of her time reviewing written depositions by claimants and conducting research on law, regulations, policies, and precedent decisions to determine whether or not the claim in question is covered by employment, education, or juvenile laws in the State, in consideration of the type and nature of the claim and the statute of limitations; determining the claimant's eligibility for various benefits; and preparing summaries of her findings for the attorney. She would spend twenty percent of her time reviewing evidence provided by the claimant, including deposition documents from personnel files, examination and deposition results, and claim histories; analyzing documents in relation to evidentiary standards; and making recommendations of such findings to the attorney. She would spend twenty percent of her time reviewing legal documentation prepared by the petitioner's legal staff, including motions to compel, pre-application discovery orders, petitions for communication, declarations of readiness to proceed, petitions for reconsideration, and writs of appeal; and analyzing documents in connection with cases at hand. She would spend twenty percent of her time conducting legal research using codes and regulations, precedent decisions, and legal databases; and identifying relevant materials to support documentation that will be submitted to the necessary courts. Finally, she would spend the remaining fifteen percent of her time attending depositions and appearing at mandatory settlement conferences under the supervision of the attorney; analyzing the results of depositions and conferences; and preparing notes for compromises and releases for use by the attorney.

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 Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a showing that the nature of the specific duties of the proposed position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The AAO disagrees with the director's characterization of the duties of the proposed position as essentially those of a paralegal. The petitioner has submitted detailed information regarding the duties of its proposed position, and they exceed the occupational scope of those typically performed by paralegals. That description of the duties of the proposed position, in combination with this particular record's information about the petitioner's business, establishes that the duties of the proposed position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

Accordingly, the proposed position qualifies for classification as a specialty occupation.

The record establishes that the beneficiary obtained a law degree from Southwestern University in 2005. She therefore qualifies to perform the duties of this specialty occupation.

The petitioner has demonstrated that the proposed position qualifies for classification as a specialty occupation and that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, the director's decision will be reversed and the petition approved.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.