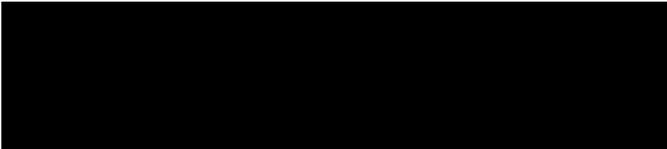




U.S. Citizenship
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FILE: WAC 06 071 51834 Office: CALIFORNIA SERVICE CENTER Date: **SEP 07 2007**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the AAO. The appeal will be summarily dismissed.

The petitioner manufactures semiconductor equipment. It seeks to extend the employment of the beneficiary as a paralegal. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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).

On June 15, 2006, the director denied the petition determining: (1) that the Department of Labor's *Occupational Outlook Handbook (Handbook)* did not report that a paralegal position is an occupation that requires a baccalaureate level of education in a specific specialty as a normal minimum for entry into the occupation; (2) that the petitioner had not submitted evidence to demonstrate that a degree in a specific field of study is common to the semiconductor equipment manufacturer industry in parallel positions or that the proffered position is complex or unique from similar but non-degreed employment; (3) that the petitioner had not submitted evidence to establish that it normally required a degree for the proffered position; or (4) that the petitioner had not presented evidence distinguishing the proffered position due to the specialized and complexity of its nature from the duties of a paralegal as generally described in the *Handbook*. The director observed that the petitioner's job description contained work duties that are similar to any corporate paralegal position, duties routinely performed by individuals not holding a bachelor's degree in any specific specialty, but are duties that may be performed with the attainment of knowledge provided in various educational programs, or through training and/or job related experience.

The director concluded that the petitioner had not met any of the requirements to classify the proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 filed January 3, 2006 with supporting documentation; (2) the director's March 28, 2006 notice of intent to deny (NOID); (3) counsel's April 7, 2006 response to the director's NOID; (4) the director's June 15, 2006 denial letter; (5) the Form I-290B, Notice of Appeal, date stamped as received by the California Service Center on July 14, 2006; and (6) a November 1, 2006 letter notifying the AAO that the petitioner had moved its offices. Although the Form I-290B indicates that a brief and/or additional evidence would be submitted to the AAO within 30 days, careful review of the record reveals no subsequent submission of a brief or evidence.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

Counsel's statement on the Form I-290B reads:

- (1) The Decision is arbitrary and capricious and an abuse of discretion as it inexplicably departs from the adjudicator's established processes and policies; in particular, the Decision questions another adjudicator's prior approval of a nonimmigrant petition for the same position without inclusion of findings of a material change in the underlying facts;

- (2) The Decision concludes that the offered position is not a "specialty occupation;" however, the same position was previously approved as a "specialty occupation" and there has been no findings of either (a) a material error with regard to the previous petition's approval, (b) a substantial change in circumstances, or (c) new material information that adversely impacts the petitioner's or beneficiary's eligibility;
- (3) The Decision is in error; the position qualifies as a "specialty occupation," for a degree requirement is common to the industry in parallel positions among similar organizations, the petitioner-employer normally requires a degree or its equivalent for the position, and the particular position is so complex or unique that it can be performed only by an individual with a baccalaureate degree or equivalent.

The AAO acknowledges the previous approval of the petitioner's petition on behalf of this beneficiary. However, prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The AAO notes that each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). When making a determination of statutory eligibility CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). This record of proceeding does not indicate whether the director reviewed the prior record and the rationale for the prior decision. CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

The petitioner in this matter has not submitted evidence that the position of a paralegal meets any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO acknowledges counsel's assertions that the proffered position qualifies as a specialty occupation pursuant to 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (3). However, neither counsel nor the petitioner has submitted any documentary evidence in support of those assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The record does not contain any evidence or argument that distinguishes the proffered position from that of a paralegal position as described in the *Handbook*. The AAO declines to speculate on the petitioner's past hiring practices, the complexity, uniqueness, or specialized nature of the proffered position and does not find any evidence of the record to overcome the director's findings in this regard. Counsel does not address any of the director's findings or determinations regarding the record of evidence as submitted in support of this petition. The AAO finds that if the prior approvals were based on the same evidence as submitted with this petition, those approvals would be in violation of paragraph (h) of 8 C.F.R. § 214.2, and would constitute material and gross error on the part of the director.

Counsel fails to specify how the director's decision included an erroneous conclusion of law of statement fact when denying the petition. Merely asserting the decision is in error and relying on previously approved petitions, not in the record, is insufficient as a basis of appeal. As neither the petitioner nor counsel presents additional evidence or argument on appeal sufficient to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v). The appeal will be summarily dismissed. The petition will be denied.

The burden of proof in this proceeding 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 summarily dismissed. The petition is denied