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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-01-057-54501 Office: Vermont Service Center Date: 16 SEP 2002

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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

Public Copy

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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a law firm with one employee and a gross annual income of \$200,000. It seeks to employ the beneficiary as a paralegal for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

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.

8 C.F.R. 214.2(h)(4)(ii) further defines the term "specialty occupation" 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.

The director denied the petition because the record does not establish that the duties of the offered position are so complex that a baccalaureate degree in a specific field of study is required for the performance of the duties. On appeal, the petitioner states that he requires a bachelor's degree for the offered position and that all of his former paralegals have held a bachelor's degree. The petitioner asserts that the degree requirement is an industry standard and also that the duties of the job are so specialized and complex that the knowledge required to perform the duties is normally associated with the attainment of a bachelor's degree.

The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The Service considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Interviewing clients, conducting research, translating and preparing contracts in Portuguese, using his knowledge of Brazilian jurisprudence, update clients on status of cases, draft correspondence, prepare memoranda of Law, petitions, applications, briefs and other pleadings.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

The petitioner asserts that the Department of Labor (DOL) has determined in its Dictionary of Occupational Titles (DOT) that a bachelor's degree is a minimum requirement for employment as a paralegal. However, a reference in the DOL's DOT, Fourth Edition, 1977, standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the DOL in the various editions of the DOL's Occupational Outlook Handbook (Handbook). The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

The DOL describes the duties of paralegals at page 214 of the Handbook, 2002-2003 edition, as follows:

Paralegals investigate the facts of cases and ensure that all relevant information is considered. They also identify appropriate laws, judicial decisions, legal articles, and other materials that are relevant to assigned cases. After they analyze and organize the information, paralegals may prepare written reports that attorneys use in determining how cases should be handled. Should attorneys decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments, draft pleadings and draft motions to be filed with the court, obtain affidavits, and assist attorneys during trials.

Paralegals in small and medium-sized law firms usually perform a variety of duties that require a general knowledge of the law.

According to the Handbook, 2002-2003 edition, at page 215, there is no requirement of a baccalaureate or higher degree in a specialized area for employment as a paralegal. There are several ways to become a paralegal. Employers usually require formal paralegal training obtained through associate or bachelor's degree programs or through a certification program. Increasingly, employers prefer graduates of 4-year paralegal programs or college graduates who have completed paralegal certificate programs. Some employers prefer to train paralegals on the job, hiring college graduates with no legal experience or promoting experienced legal secretaries. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

The petitioner asserts that the degree requirement is common to the industry in parallel positions among similar organizations. In support of his assertion, counsel submits various job postings for paralegal positions. Most of the ads state that the successful candidate must have a bachelor's degree and paralegal certification. However, not one of the ads specifies that the bachelor's degree must be in a specific and related field of study.

These ads support the DOL's statement in the Handbook that the standard requirement for paralegals in the industry is a four-year degree and paralegal certification.

The petitioner further states that similar firms with high-profile immigration law attorneys such as Stanley Mailman, Ira Kurzban, and Cyrus Mehta employ paralegals with college degrees. In support of his statement, the petitioner submits information from the websites of these firms. However, nowhere in this information is it stated that all of the paralegals employed by these firms have a degree in a specific and related field of study.

The petitioner states that he requires a bachelor's degree and paralegal certification as part of the hiring process. In support of his statement, the petitioner has submitted a list of his former paralegals and their educational credentials. A review of this list reveals that one of his former paralegals has a bachelor's degree in history; one has a Masters degree in Spanish; one has a bachelor's degree in library science; one has a bachelor's degree in political science; and one has a law degree. It appears that the petitioner requires that his paralegals have a bachelor's degree, but he does not require that the degree be in a specific field of study.

The petitioner's statement that the holder of the offered position must be able to speak Portuguese and translate legal documents from Portuguese into English is noted. However, the petitioner has not shown that these duties are of such complexity that the knowledge required to perform the duties is normally associated with the attainment of a baccalaureate degree in a English or Portuguese. In this case, the beneficiary's skill in speaking Portuguese and English-Portuguese translation derives from the fact that he is a native speaker of the language, rather from the fact that he has obtained a bachelor's degree in Portuguese, English, or linguistics.

The petitioner asserts that the duties of the offered position are more specialized and complex than those of most paralegal positions since the petitioner practices international law and the beneficiary as his paralegal must be able to speak Portuguese and understand Brazilian law. However, the petitioner has not provided any independent evidence to corroborate his assertion. It was held in Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988) and Matter of Ramirez-Sanchez, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence. According to the Handbook, there is no requirement of a baccalaureate or higher degree for employment as a paralegal. The petitioner has not shown that the duties of the offered position are more complex and specialized than those normally required of paralegals. Thus, the petitioner has not established that the duties of the offered position are so specialized and complex that the knowledge required to perform the

duties is normally associated with the attainment of a bachelor's degree in a specialized field of study.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.