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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, DC 20536

[redacted]

File: EAC 02 030 52663 Office: VERMONT SERVICE CENTER Date: JAN 06 2004

IN RE: Petitioner: [redacted]
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 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 Citizenship and Immigration Services (CIS) 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.

Robert P. Wiemann,
Director, Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, 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 Fairfax, Virginia law firm with two employees and a gross annual income of $150,000. It seeks to employ the beneficiary as a special legal assistant on Filipino laws for a period of three years. The director determined that the position offered was not a specialty occupation because the petitioner had not established that a bachelor's degree, or its equivalent, in a specific specialty is required.

On appeal, the petitioner submits a brief and other documentation. The petitioner asserts that the position of special legal assistant on Filipino laws is a specialty occupation, because it requires a bachelor's degree.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation. 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 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:

> [A]n 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.

In its original filing, the petitioner indicated that the proposed job duties included the following:

- Network and generate Philippine related cases;
- Monitor status of Philippine related cases;
- Meet with and interview clients and witnesses;
- Liaise with officials of Philippine Embassy, consular offices and pertinent agencies;
- Conduct legal research, draft and prepare pleading; legal memoranda, etc.;
- Monitor billing and collections for pertinent cases. [sic] [;and]
- Serves [sic] as a coordinator of U.S.-Philippine Immigration related cases.

The petitioner did not state that it requires a bachelor's degree in a specific specialty. The original filing included an evaluation which found that the beneficiary holds the equivalent of a U.S. bachelor of science degree in education in the field of elementary English as a Second Language (ESL).

On January 7, 2002, the director requested evidence that the proffered position constituted a specialty occupation and that the beneficiary was qualified to perform the proffered position. In response, the petitioner submitted two letters, several statements, an affidavit, and an evaluation. The petitioner stated, among other things, that the position required a bachelor's degree in any field and at least three years of research work experience on Philippine law.

On July 9, 2002 the director denied the petition. The director noted that there are several ways to become qualified to work as a legal assistant. The petitioner asserts that the position

offered is so complex that only an individual with a bachelor's degree would be able to perform its duties.

In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1)

Citizenship and Immigration Services (CIS) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for guidance regarding educational requirements. The *Handbook* 2002-2003 edition on page 215 discusses the educational requirements for legal assistants and paralegals. The *Handbook* indicates that, while employers increasingly prefer to hire graduates of four-year paralegal programs or college graduates who have completed paralegal certificate programs, there are many avenues to entry into this field, including promotion from a legal secretary position, completion of high school and a brief paralegal training course, and completion of an associate's degree program. In fact, the *Handbook* does not state that a specific field of undergraduate study is a requisite. CIS notes that, if a bachelor's degree or its equivalent in a variety of disciplines is the minimum entry requirement, then the job is not a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. §1184(i)(1).

II. 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 - 8 C.F.R. § 214.1(h)(4)(iii)(A)(2)

A. Degree Requirement is Common to the Industry

Factors often considered by CIS when determining the industry standard 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." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)). The *Handbook*'s conclusions about a degree requirement for a legal assistant position were discussed in the previous section, and shall not be repeated here. The petitioner submitted no documentation that any professional legal assistant association has made a bachelor's degree a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly the

petitioner has not established that the degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, the petitioner has submitted no documentation that the proffered position would involve duties seen as either unique or complex that only an individual with a degree in a specific specialty could perform them.

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h)(4)(iii)(A)(3)

The petitioner submitted an H1B visa approval, valid for 1995 to 1998, for another legal assistant it hired. The petitioner states that the individual hired at that time was approved to work as a legal assistant based on his degree in theology. However, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In 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). CIS is not required to approve 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). Neither CIS nor any other 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).

IV. 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 - 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)

To date the petitioner has placed no information on the record with regard to the specialized and complex nature of the proffered position. The job description in the original petition contains work duties that, although perhaps not entry-level duties, are similar to any legal assistant position. Although the petition characterizes the proposed duties as being exceptionally complex, due to their international character, no further documentation as to any specialized or complex duties within this description has been placed on the record. Without more persuasive evidence as to the specialized or complex nature of the position, the petitioner has not met this criterion.

A review of the entire record fails to reveal any evidence that the offered position requires a bachelor's degree, or its equivalent, in a specific discipline. 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. Accordingly, the director's decision will be affirmed.

ORDER: The director's decision denying the petition is affirmed. The appeal is dismissed.