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

[redacted]

FILE: LIN 01 202 55488 Office: NEBRASKA SERVICE CENTER Date: JUN 7 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 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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and certified his decision to the Administrative Appeals Office (AAO). The director's decision will be affirmed. The petition will be denied.

The petitioner is a legal service provider that seeks to employ the beneficiary as an international legal researcher. 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 because the petitioner failed to establish that the proffered position qualified as a specialty occupation.

The issue to be discussed on certification is whether the petitioner established that the proffered position – international legal researcher – qualifies as a specialty occupation.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(l), 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.

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 proffered position.

The record of proceeding before the AAO contains: (1) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an international legal researcher. Evidence of the beneficiary's duties includes: the Form [redacted] letter accompanying the Form I-129; the petitioner's responses to the director's requests for evidence; and the petitioner's appeal. According to this evidence, the beneficiary would perform duties that entail, in part: assisting in the drafting and translation of corporate documents such as minutes, board resolutions, and articles of incorporation; drafting transactional documents such as purchasing agreements, letters of authorization, and promissory notes; drafting and translating client information such as demand letters and announcements about business plans and a company's ownership structure; researching, preparing, and filing documents with regulatory agencies such as city licenses, formation of business entities, license renewals, and changes of business ownership; drafting correspondence to corporate clients; performing research relating to the nature of a company's operations and financial status; reviewing publications for advertising; presenting findings orally and in writing and in the English and Chinese languages; translating Chinese legal documents into the English language; and finally, drafting letters to clients and government agencies. The petitioner stated that a candidate must possess a bachelor's degree with an emphasis in research, writing, communications, or a related field, and have a command of the Chinese language.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the submitted job postings, the director stated that the organizations require that a candidate possess a baccalaureate or college degree, but not in a specific specialty. The director emphasized that because the postings did not describe the nature of the advertising organizations, it was impossible to determine whether the organizations were similar to the petitioner. The director stated that the petitioner's resume and client list failed to establish that the proffered position required a baccalaureate degree in a specific specialty. Instead, the director found that the evidence merely demonstrated that the petitioner held a juris doctor degree and had clients. According to the director, the publication from th [redacted] opinion that a baccalaureate degree - although not in a specific specialty - should be required for a legal assistant position. The director found that [redacted] statement, that on the west coast the paralegal profession requires candidates to possess four-year undergraduate degree and a certificate from an ABA-approved program, and that some employers will accept candidates with an associate's degree and a certificate, demonstrated that a baccalaureate degree in a specific specialty was not required for the proffered position. Referring to th [redacted] the director stated that employers do not require a specific bachelor's degree for a paralegal position. [redacted] the director explained, is not a definitive guide for adjudicating petitions for immigration benefits. Last, the director mentioned that the petitioner did not establish a past practice of normally requiring a degree or its equivalent or demonstrate that the nature of the position's specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a specific baccalaureate or higher degree.

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.

First, the AAO considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*1*) and (*2*): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a degree requirement in a specific specialty 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 [redacted] 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." [redacted]

The petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). As previously discussed, 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 proffered position. A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. It must be demonstrated that the position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility. [redacted]

According to the evidence in the record, the petitioner does not require a bachelor's degree in a specific specialty. For example, the [redacted] letter stated that a candidate must possess a bachelor's degree with an emphasis in "communications, research methodologies, and writing," and the letter also stated that "related fields" are acceptable. The petitioner's detailed job description reported that a candidate must possess a bachelor's degree "with an emphasis on [sic] research, writing, and communication skills." The petitione[redacted] etter stated that the proffered position requires a "U[.]S[.] college degree," and the [redacted] etter from the petitioner stated:

> [T]he qualified candidate shall have a U[.]S[.] college degree in a liberal arts discipline with classes and course work that drill on doing research, and general knowledge of or course work in East Asian culture, economy or history.

The letter also stated "I believe that a liberal arts college degree is required to fulfill the responsibilities of the position of international legal researcher." Based on the evidence in the record, the petitioner's degree requirement would not qualify the proffered position as a specialty occupation because a liberal arts degree is not a specialized field of study.

In deciding whether a 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 *Handbook* for its information about the duties and educational requirements of particular occupations. [redacted]s not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL had replaced the *DOT* with the [redacted] Both the *DOT and O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The DOLs *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation.

The petitioner's offered position, namely international legal researcher, seems to combine the duties of a paralegal and legal assistant with those of a translator. [redacted] also called a legal assistant, is described 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 attorney's decide to file lawsuits . . . paralegals help prepare the legal arguments, draft pleadings and motions to be filed with the court, obtain affidavits, and assist attorneys during trials. Paralegals also organize and track files . . . .
>
> Paralegals also . . . help draft contracts, mortgages, separation agreements, and trust documents.

The beneficiary's duties reflect those of paralegals: both positions investigate facts of cases; research laws, judicial decisions, and legal articles; obtain, analyze, and organize information; and prepare written documents and draft legal documents. It is important to note that the DOL states that paralegals and legal assistants are explicitly prohibited from carrying out duties that are considered to be the practice of law, such as giving legal advice.

According to the *Handbook*, one becomes a paralegal in several ways. The trend is employers usually require formal paralegal training obtained through either associate or bachelor's degree programs or certification programs. Some employers prefer graduates of four-year paralegal programs or college graduates who have completed paralegal certificate programs. Others prefer to train paralegals on the job, hiring college graduates with no legal experience.

In the *Handbook*, the position of interpreter and translator entails translating or interpreting written or oral text into another language, and the *Handbook* describes the most significant source of training as long-term on-the-job training.

Based on the above discussion, the petitioner fails to fulfill the first criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

The AAO moreover finds that the director correctly concluded that the petitioner's resume and client list were irrelevant to this case in establishing that the proffered position requires a baccalaureate degree in a specific specialty.

To establish the second criterion - that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations – the record contains Internet posts. However, the postings are deficient: although all of the postings require a bachelor's degree, none indicate that the degree must be in a specific specialty. Accordingly, the director properly determined that the postings are inadequate to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

The director also correctly concluded that [redacted] that a baccalaureate degree should be the minimum requirement for employment as a legal assistant" did not establish that a bachelor's degree in a specific specialty was required for the proffered positio[redacted] did not explicitly state that a specific baccalaureate degree is required for a legal assistant position.

Similarly, the director properly found that the statement from Interim Legal Services - that on the west coast the paralegal profession requires candidates to possess four-year undergraduate degree and a certificate from an ABA-approved program, and that some employers will accept candidates with an associate's degree and a certificate – undoubtedly showed that a baccalaureate degree in a specific specialty was not required to perform the duties of the proffered position.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

There is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent in a specific specialty for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties 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 in a specific specialty. As previously discussed, the *Handbook* indicates that a bachelor's degree in a specific specialty is not required to perform

the duties of the proffered position. More important, the petitioner itself conceded on a number of occasions that a bachelor's degree in a specific specialty is not required for the proffered position.

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.