

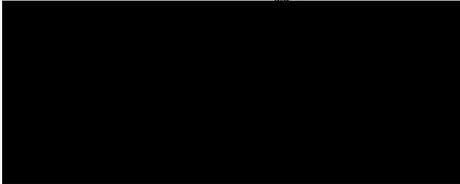
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U.S. Citizenship
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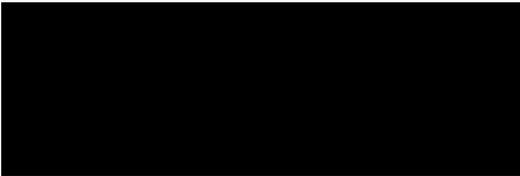
DL

FILE: WAC 04 006 52295 Office: CALIFORNIA SERVICE CENTER Date: FEB 16 2005

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a collection recovery service. It seeks to employ the beneficiary as a legal researcher and to classify him 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 ground that the proffered position is not a specialty occupation.

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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, the appeal brief, and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner, a collection recovery services provider founded in 1951, seeks to employ the beneficiary as a legal researcher to assist the company's in-house attorneys. As listed by the petitioner in a letter accompanying the petition, the duties of the position include (1) reviewing contracts and documents, (2) researching legal issues, (3) performing risk management on collection matters, (4) drafting legal memoranda, (5) working with attorneys on a variety of collections and collections related projects, and (6) other legal tasks relating to collection matters. In its letter the petitioner stated that a baccalaureate or higher degree was needed to perform the duties of the position. The beneficiary, a native of the Philippines, earned a bachelor of science in general studies on March 12, 1974 and a bachelor of laws on October 16, 1979, both from the University of Santo Tomas in Manila. The petitioner also submitted a letter from a professor at Hofstra University in Hempstead, New York, declaring that it was a general practice among large collection companies like the petitioner to hire legal researchers with bachelor's level education in legal studies or a related field.

The director determined that the proffered position is not a specialty occupation. In particular, the director found that the duties of the position reflected the duties of a paralegal or legal assistant, as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, an occupation for which a baccalaureate level of training, though preferred, is not always required and is not the normal, industry-wide minimum requirement for entry. The director noted that the position is newly created, so there is no record of the petitioner normally requiring a baccalaureate or higher degree. After reviewing the evidence of record the director determined that the position's duties and responsibilities did not indicate an unusual level of complexity or authority, or that the job could not be performed by an experienced individual with less than a baccalaureate degree in a specialized field. The director concluded that the proffered position did not meet any of the criteria in 8 C.F.R. § 214.2(h)(4)(iii)(A) for classification as a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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." See *Shanti, Inc. v. Reno*, 36 F.Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

The *Handbook*, 2004-05 edition, at 211, describes paralegals and legal assistants as interchangeable titles for an occupation which:

continue[s] to assume a growing range of tasks in the Nation's legal offices and perform many of the same tasks as lawyers

One of a paralegal's most important tasks is helping lawyers prepare for closings, hearings, trials, and corporate meetings

[T]hey help draft contracts, mortgages, separation agreements, and trust instruments.

They also may assist in preparing tax returns and planning estates

Paralegals are found in all types of organizations, but most are employed by law firms, corporate legal departments, and various government offices. In these organizations, they can work in many different areas of the law As the law has become more complex, paralegals have responded by becoming more specialized

The duties of paralegals also differ widely based on the type of organization in which they are employed. Paralegals who work for corporations often assist attorneys with employee contracts, shareholder agreements, stock-option plans, and employee benefit plans. They also may help prepare and file annual financial reports, maintain corporate minute books and record resolutions, and prepare forms to secure loans for the corporation. Paralegals often monitor and review government regulations to ensure that the corporation is aware of new requirements and [] operates within the law.

On appeal counsel first argues that the director misclassified the proffered position as a paralegal. According to counsel the position more closely resembles that of a law clerk because it requires greater exercise of independent judgement and interpretation. Law clerks are briefly described in the *Handbook* (in the section entitled “Data for Occupations not Studied in Detail”) as an occupation that “[a]ssists lawyers or judges by researching or preparing legal documents” and “[m]ay meet with clients or assist lawyers and judges in court.” *Handbook* at 650. The *Handbook* also states that a bachelor’s degree is a law clerk’s most significant source of education or training. Counsel argues that a law clerk is a specialty occupation because the *Handbook* indicates it requires a bachelor’s degree. As defined in the statute, however, a specialty occupation is one that requires “a bachelor’s or higher degree *in the specific specialty.*” Section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B) (emphasis added). A law clerk position that requires only a general degree, or a degree unrelated to the subject area of the position, does not meet the statutory definition of a specialty occupation. In any event, counsel does not explain how the duties of the proffered position exceed those of a typical paralegal, except for the unsubstantiated assertion that the position requires more independent judgement and interpretation. The AAO is not persuaded that the proffered position should be categorized as a law clerk.

The AAO agrees with the director that the duties of the proffered position, as listed by the petitioner, accord with the *Handbook*’s description of a paralegal (or legal assistant). As discussed by the director in his decision, a bachelor’s or higher degree in a specific specialty is not required to become a paralegal. To the contrary, as explained in the *Handbook*, at 212:

There are several ways to become a paralegal. The most common is through a community college paralegal program that leads to an associate’s degree. The other common method of entry, mainly for those who have a college degree, is through a certification program that leads to a certification in paralegal studies. A small number of schools also offer bachelor’s and master’s degrees in paralegal studies. Some employers train paralegals on the job, hiring college graduates with no legal experience or promoting experienced legal secretaries. Other entrants have experience in a technical field that is useful to law firms, such as a background in tax preparation for tax and estate practice, criminal justice, or nursing or health administration for personal injury practice.

Thus, the record does not establish that a baccalaureate or higher degree is the normal minimum requirement for entry into a paralegal position. Accordingly, the position does not meet the first alternative criterion of a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), counsel cites the letter from Barbara Patton, Assistant Professor at Hofstra University's School of Business, Department of Accounting, Taxation and Legal Studies in Business, dated October 30, 2003, declaring that "I believe that it is a general practice among large collection corporations . . . to hire a Legal Researcher with a bachelor's-level educational background in Legal Studies or a related field." Prof. Patton offers no concrete examples in support of this assertion. Nor is there any other evidence in the record, such as job announcements from other collection recovery companies, supporting the claim. Simply going on record without supporting documentary evidence does not satisfy the petitioner's burden of proof. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190, 193-94 (Reg. Comm. 1972). The AAO concludes that the petitioner has failed to establish that "the degree requirement is common to the industry in parallel positions among similar organizations," as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). According to Prof. Patton, the proffered position is distinguishable from that of a standard paralegal position because of "the advanced responsibilities in legal research and analysis, and the risk management component of the collections area." The record does not support Prof. Patton's assertion that the proffered position is distinguishable in any significant way from a standard paralegal position with respect to the difficulty or speciality of the legal research required. As for the risk management component of the collections area, there is no evidence that this substantive area is "so complex or unique that it can be performed only by an individual with a degree," as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The *Handbook* makes clear that many employers hire paralegals without experience and train them in substantive areas on the job.

Nor does the proffered meet the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3) – "the employer normally requires a degree or its equivalent for the position" – because the position is newly created and the petitioner does not have a hiring history.

Lastly, the proffered position does not meet the fourth alternative criterion to qualify as a specialty occupation, set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the petitioner has not provided persuasive evidence that the specific duties are so specialized and complex that they require a body of knowledge associated with the attainment of a baccalaureate or higher degree in a specific specialty. The substantive areas in which the petitioner, and Prof. Patton, assert the legal researcher must be competent – such as contracts, corporation law, and business law – are typically learned by paralegals on the job.

For the reasons discussed above, the proffered position does not qualify as a specialty occupation under any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the record fails to establish that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.