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U.S. Citizenship
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FILE: EAC 03 128 50684 Office: VERMONT SERVICE CENTER Date: JUN 15 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:

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, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition 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 law firm specializing in immigration law that seeks to employ the beneficiary as a federal law immigration paralegal. The petitioner 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 proffered position does not qualify as a specialty occupation. On appeal, the petitioner submits a brief stating that the offered position qualifies as a specialty occupation.

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

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

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 are 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a federal law immigration paralegal. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to the evidence the beneficiary would: research and respond to requests for evidence; assist with litigation; prepare appeals; prepare discovery motions, interrogatories and requests for admission; perform legal research; prepare legal briefs; and prepare I-140 petitions and I-129 petitions for H, L and E visas. The petitioner requires a minimum of a bachelor’s degree in law or paralegalism for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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)).

The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are those noted for paralegals and are described in the *Handbook* as follows:

While lawyers assume ultimate responsibility for legal work, they often delegate many of their tasks to paralegals. In fact, paralegals - also called legal assistants - continue to assume a growing range of tasks in the Nation’s legal offices and perform many of the same tasks as lawyers. Nevertheless, they are still explicitly prohibited from carrying out duties which are considered to be the practice of law, such as setting legal fees, giving legal advice, and presenting cases in court.

One of a paralegal's most important tasks is helping lawyers prepare for closings, hearings, trials, and corporate meetings. 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 motions to be filed with the court, obtain affidavits, and assist attorneys during trials. Paralegals also organize and track files of all important case documents and make them available and easily accessible to attorneys.

In addition to this preparatory work, paralegals also perform a number of other vital functions. For example, they help draft contracts, mortgages, separation agreements, and trust instruments. They also may assist in preparing tax returns and planning estates. Some paralegals coordinate the activities of other law office employees and maintain financial office records. Various additional tasks may differ, depending on the employer.

The *Handbook* notes that there are several ways to become a paralegal, and that employers usually require formal paralegal training through an associate/bachelor's degree, or certification programs. Increasingly, employers prefer graduates of four-year paralegal programs, or college graduates with paralegal certification. Other employers, however, prefer to train college graduates with no experience, or to promote experienced legal secretaries. It is, therefore, apparent that a baccalaureate or higher degree in a specific specialty, or its equivalent, is not normally the minimum requirement for entry into the proffered position. The petitioner has failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion, the petitioner submitted a statement from [REDACTED] University of Connecticut, and a statement from [REDACTED] the University of Connecticut. [REDACTED] opined that the proffered position was a specialty occupation that required at least a degree in law or a bachelor's degree in paralegalism. His statement was contradicted, however, by his subsequent assertion that before becoming an attorney, an individual must know how to perform the duties of the proffered position and that those tasks were traditionally learned by law students/graduates "for a couple of years before he/she can become a successful practicing attorney." Law clerks, traditionally law students who have not yet graduated from law school, or law school graduates who have not yet completed licensing requirements to become an attorney, work for law firms or other legal organizations performing the tasks of the proffered position, as do paralegals not necessarily having a baccalaureate level education. Law student clerks/paralegals do not generally possess a law degree or a baccalaureate level education in a specific specialty in order to perform their duties. They do have legal training, but it is not required that the training received be at a baccalaureate level. [REDACTED] is of the opinion that the position would require a minimum of a bachelor's or a juris doctor degree in law. Neither professor offered any basis for their opinion such as a labor survey or information from a recognized professional association to corroborate their opinions. Indeed, Professor Birmingham notes that the American Bar Association (ABA) defines a legal assistant or paralegal as ". . . a person

qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.” There is no indication that the ABA requires any particular method or level of training to perform the designated tasks.

The petitioner also makes reference to the *Dictionary of Occupational Titles (DOT)* and accompanying SVP rating for the proffered position. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree for the proffered position, and offers no evidence to establish this criterion as the position is apparently new with his law firm. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties are routine for paralegal positions in the industry and regularly performed by individuals with less than a baccalaureate level education in a specific specialty, and by individuals with degrees in a wide range of educational disciplines. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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