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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 05 2005

IN RE:

Petitioner:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the California Service Center 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 with a practice in immigration, family and criminal law, and one employee. It seeks to hire the beneficiary as a paralegal. The director denied the petition because he determined that the proffered position did not meet any of the criteria required for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the petitioner's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B and previously submitted evidence. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is the determination of whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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:

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.

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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner seeks the beneficiary's services as a paralegal. Evidence of the beneficiary's duties includes: the Form I-129; a listing of responsibilities submitted with the Form I-129; and the petitioner's response to the director's request for evidence.

At the time of filing, the petitioner provided an extensive list of paralegal duties, including responsibility for the drafting of a wide range of legal documents. In response to the director's request for evidence, the petitioner amended that description, breaking down the beneficiary's duties as follows:

- Meet and interview clients and potential clients with the petitioner (20 percent of the beneficiary's time);
- Obtain legal and government documents and set the schedule of dates for each case, including when documents must be filed (20 percent of the beneficiary's time);
- Research U.S. immigration decisions and Philippine laws affecting clients (20 percent of the beneficiary's time); and
- Input basic case information into office computers in order to work with the petitioner in preparing briefs or petitions or in handling family court matters (40 percent of the beneficiary's time).

In response to the director's request for evidence, the petitioner emphasized the importance of the beneficiary's ability to interpret in the Tagalog, [REDACTED], and [REDACTED] dialects, as such language skills are necessary for interviews and in court cases. The petitioner also stressed the need for a familiarity with word processing programs, the ability to electronically retrieve data and documents from the Internet and knowledge of procedural and enforcement matters at the national, state and county levels, as well as Philippine laws related to family law and the admiralty.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement 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 considered by the

AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The petitioner has stated that the duties of the proffered position are those of a paralegal, a conclusion shared by the director. The AAO agrees. The *Handbook's* (2004-2005 edition) discussion of the occupation of paralegals and legal assistants largely parallels the petitioner's description of the proffered position's duties. At page 211, it states:

While lawyers assume ultimate responsibility for legal work, they often delegate many of their tasks to paralegals. In fact, paralegals . . . continue 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. 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.

Paralegals in small and medium-sized law firms usually perform a variety of duties that require a general knowledge of the law. For example, they may research judicial decisions

Computer use and technical knowledge has become essential to paralegal work

As to the educational requirements for paralegals, the *Handbook*, at page 212, identifies no specific degree requirement for employment as a paralegal. Instead, it states:

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.

Based on the preceding discussion, the AAO concludes that the petitioner has not met the requirements of the first criterion – that the minimum requirement for entry into the proffered position requires a baccalaureate or higher degree, or its equivalent. The duties of a paralegal, as discussed above, may be performed by individuals who do not possess a bachelor's or higher degree in the specialty. Instead, those entering the paralegal profession commonly hold associate's degrees or may be qualified for a paralegal position based on certification programs or their previous work experience.

To establish the second criterion – a specific degree requirement is common to the industry in parallel positions among similar organizations or the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty – the petitioner, in response to the director's request for evidence, provided the names of two law offices it stated had similar legal practices. Both offices employ paralegals. In one of the law offices, the paralegal holds a baccalaureate in English and in the other a law degree. However, simply going on record without documentation is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Moreover, even if the petitioner's statements could serve as evidence, the hiring practices of two law offices with regard to paralegals are insufficient evidence of an industry-wide practice. The AAO also notes that in both the offices referenced by the petitioner, the paralegals are the spouses of the attorney. It would appear that the basis for their employment may be related more to family relationship than to the firms' practice of hiring paralegals with baccalaureate degrees. Further, the degrees are disparate and do not establish a degree requirement in a specialty. The petitioner has not met the first prong of the criterion – a specific degree requirement is common to its industry.

After reviewing the record, the AAO also concludes that the petitioner has failed to meet the second prong of the criterion – the position is so complex or unique that it can be performed only by an individual with a degree. The record contains no evidence that would support such a finding. Accordingly, the petitioner cannot establish its position as a specialty occupation under either prong of the second criterion.

The AAO now turns to a consideration of whether the petitioner's proffered position may qualify as a specialty occupation under the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant case, the petitioner has submitted no evidence with regard to its normal practice when hiring paralegals. As a result, the AAO finds that the petitioner cannot establish its proffered as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion 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 the specialty. While the position's duties are those of a paralegal, the petitioner has stressed the importance of the beneficiary's ability to speak three Philippine dialects in performing those duties. On appeal, the petitioner states that the beneficiary's ability to speak these dialects "is impossible to get in Hawaii" and that such language skills are "necessary and essential" in dealing with the office's clients. However, although the petitioner indicates that it requires the beneficiary's language abilities to meet and interview clients and potential Filipino clients, it offers no further discussion of this responsibility and how it would be carried out. As a result, the AAO is unable to determine whether the petitioner's paralegal position would also require the beneficiary to serve as a professional interpreter, a position that could require a higher degree of knowledge and skill than would normally be required of a paralegal, or simply to informally use his language skills to assist the petitioner's clients in better understanding the legal issues and requirements presented to them. Lacking evidence to establish that the proffered paralegal position would require the beneficiary to possess a unique set of skills or that it represents an amalgam of jobs that might require different qualifications, the record cannot establish the position as a specialty occupation under the fourth criterion.

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as 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.