



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 17 2013**

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, revoked the approval of the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The approval of the petition will remain revoked.

On the Form I-129 visa petition, the petitioner describes itself as an immigration law firm with seven employees.¹ To continue to employ the beneficiary in what it designates as an administrative assistant position, the petitioner endeavors to classify her 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 AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the notice of intent to revoke (NOIR); (3) the petitioner's response to the NOIR; (4) the director's revocation letter; and (5) the Form I-290B and the petitioner's submissions on appeal.

The visa petition was submitted on January 3, 2007. On the visa petition and the certified Labor Condition Application (LCA) submitted to support it, the petitioner designated the proffered position an "administrative assistant" position. As to the duties of the proffered position, in a letter dated November 29, 2006, the petitioner's managing partner stated:

In this office, the position of Administrative Assistant requires a high level of skill and acute attention to details. The incumbent will be responsible of [sic] overseeing a number of administrative functions within the office. As a result of the level of responsibility accorded to this position, we require a candidate who is well skilled in office management and secretarial skill as well as articulate.

Additionally, because of the international nature of this office, we require an Administrative Assistant who is experienced with many cultures and languages, and has extensive international experience.

The office frequently must answer questions from people of various cultural and ethnic backgrounds, and seeks to employ a staff with eclectic credentials. In addition to superior administrative skills, we require a person who speaks multiple languages and has an understanding of another region of the world. This requirement is necessary because many of our clients are not fluent in English, and do not understand American culture well enough to effectively conduct business with us. By employing people of various ethnic and cultural backgrounds we are more able to

¹ Although the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, the AAO observes that it was executed by the petitioner's managing partner who consented on behalf of the firm to her own representation of the petitioner in this matter. The AAO, therefore, finds that the petitioner is self-represented.

communicate effectively with our clients. We are particularly interested in [the beneficiary's] background in Hindi, and the Indian culture, since we anticipate immigration up to 1000 Registered Nurses from [sic] India over the next two (2) years and currently have more than 30% of our client base originating from India. [The beneficiary] speaks and/or understands English, Hindi, Punjabi and Marathi.

This office also requires a person who has had significant experience as an assistant in a high pressure, deadline oriented environment, and has formal training as an assistant. Because of the need of this office to complete case [sic] in a timely manner, and to gather pertinent, detailed information for each case, we must employ a person who has highly developed organizational skills, and is proficient in the most recent computer software programs.

The AAO notes that the petitioner's managing partner did not state whether the proffered position requires a minimum of a bachelor's degree or the equivalent *in a specific specialty* or, if it does, in what specific specialty. Nevertheless, the visa petition was approved on March 20, 2007.

On June 22, 2010, the director issued an NOIR. In the NOIR, the director notified the petitioner of his intent to revoke the approval of the visa petition because the approval appeared to be the result of gross error, as the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation position.

In response, the petitioner's managing partner provided additional evidence. She also stated that her firm has always required a minimum of a bachelor's degree for the proffered position, and that the beneficiary is well-qualified for the position. Specifically, in a letter dated July 23, 2010, the petitioner's managing partner stated that the petitioner has "employed eight (8) Administrative Assistants/Legal Specialists" and that "[a]ll have had a Bachelors [sic] degree, four have had a Master's degree, [and] one was completing her Ph.D [sic] at Princeton University." She also stated:

With regard to former employees with bachelor's degrees or equivalent, previously, [redacted] had an equivalency, her H1-B classification educational evaluation and resume are attached. [redacted] (who has been traveling outside of the US) will provide proof of his Bachelors' and Master's degree shortly and that will be forwarded to the service.

In addition, [redacted], a 2001 Magma Cum Laude graduate of [redacted] [redacted] who is now a practicing Attorney; as well as [redacted], also a 2001 graduate of [redacted] who went on to earn a Masters degree from [redacted] have held the position of Administrative Assistant/Legal Specialist in my law office. [redacted] who held a Masters degree from [redacted] and was working on her PH. D from [redacted] worked for me as well in an administrative capacity.

[Errors in the original].

The managing partner also added duties to the initial description of the proffered position. She stated the following:

[The beneficiary's] job is almost exactly as it was originally presented. She can process I-765, NVC Processing, I-130/I-485-I-765, I-751, I-90, I-864, Schedule A PERM/I-140 processing, Request for FOIA, all with minimal supervision. She prepares simple Motions for Immigration Court, as well as very complex exhibit packages, keeps an accurate Court schedule with case type, time, Judge, and she knows how to research case status.

The petitioner's managing partner further stated:

It has been my experience, having been in the legal profession for over 30 years, first as a legal secretary, legal assistant and finally as an attorney since 1986 that most high end law practices require a Bachelors [sic] degree for an Administrative Assistant/Legal Specialist position. However this is not the requirement for a Secretary. [The beneficiary] is not now nor has she ever been a Secretary. She reports directly to me and has complex and sophisticated duties.

The petitioner also submitted, *inter alia*, (1) a Form W-2 and payroll information for [REDACTED]² and (2) payroll summaries pertinent to some of the petitioner's employees.

The director revoked the approval of the petition on September 16, 2010. The director determined that the petitioner failed to establish that the proffered position qualifies as a specialty occupation.

On appeal, the petitioner's managing partner reiterated that the proffered position is a specialty occupation position because it requires a bachelor's degree. The petitioner's managing partner did not assert that the proffered position requires a bachelor's degree *in any specific specialty* or state, if it does, the specific specialty that degree would have to be in. She also stated, "Over fifteen percent of [the beneficiary's] work is comprised of interpretation of conversations and translation of documents and explanation of cultural nuances."

Upon review, the AAO finds that the petitioner has failed to establish that the position qualifies as a specialty occupation. To meet its burden of proof pertinent to the specialty occupation issue, the petitioner must establish that the employment it is offering to the beneficiary meet the following statutory and regulatory requirements.

² It is noted that the employee's last name is spelled [REDACTED] on the Form W-2 and payroll documents; therefore the AAO will use that spelling when referring to this employee herein.

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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] 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 [(2)] 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A)

should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS 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. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. 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.

As a preliminary matter, the petitioner's claim that an otherwise undifferentiated bachelor's degree is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the position, thus the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). The petitioner's assertion that its minimum requirement for the proffered

position is a bachelor's degree is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the approval of the petition revoked on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and 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 in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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 will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ The petitioner provided an LCA in support of the instant petition that corresponds to the occupational classification "Executive Secretaries and Administrative Assistants." In the "Secretaries and Administrative Assistants" chapter, the *Handbook* provides the following description of the duties of those positions:

What Secretaries and Administrative Assistants Do

Secretaries and administrative assistants perform routine clerical and organizational tasks. They organize files, draft messages, schedule appointments, and support other staff.

Duties

Secretaries and administrative assistants typically do the following:

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

- Maintain paper and electronic filing systems for records and messages
- Route and distribute incoming mail and email
- Answer routine letters and email
- Reply and attach files to incoming messages
- Correct spelling and grammar to ensure accuracy
- Operate fax machines, videoconferencing and phone systems, and other office equipment
- Use computers for spreadsheet, word processing, database management, and other applications
- Complete forms in accordance with company procedures

Secretaries and administrative assistants perform a variety of clerical and organizational tasks that are necessary to run an organization efficiently. They use computer software to create spreadsheets, compose messages, manage databases, and produce presentations, reports, and documents. They also may negotiate with vendors, buy supplies, manage stockrooms or corporate libraries, and get data from various sources. Specific job duties vary by experience, job title, and specialty. The following are types of secretaries and administrative assistants:

Executive secretaries and executive administrative assistants provide high-level administrative support for an office and for top executives of an organization. They often handle more complex responsibilities, such as reviewing incoming documents, conducting research, preparing reports, and arranging meetings. They may supervise clerical staff.

Legal secretaries do specialized work requiring knowledge of legal terminology and procedures. Legal secretaries prepare messages and legal papers, such as summonses, complaints, motions, responses, and subpoenas under the supervision of an attorney or a paralegal. They also may review legal journals and help with legal research—for example, by verifying quotes and citations in legal briefs.

Medical secretaries transcribe dictation, prepare messages, and help physicians or medical scientists with reports, speeches, articles, and conference proceedings. They also take simple medical histories, arrange for patients to be hospitalized, and order supplies. Medical secretaries need to be familiar with medical terminology, insurance rules, billing practices, medical records, and hospital or laboratory procedures.

Secretaries and administrative assistants, except legal, medical, and executive is the largest subcategory of secretaries and administrative assistants. They handle an office's administrative activities in almost every sector of the economy, including schools, government agencies, and private corporations. Secretaries in schools are

often responsible for handling most of the communications among parents, the community, teachers, and school administrators. They schedule appointments, keep track of students' records, and handle matters that do not require the principal's attention.

Virtual assistants work from a home office. They use the Internet, email, and fax machines to communicate with clients. Although their assignments often vary from short term to long term, their typical duties are similar to those of other secretaries and administrative assistants. Working from a remote location allows virtual assistants to support multiple clients in different industries at the same time.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Secretaries and Administrative Assistants," <http://www.bls.gov/ooh/office-and-administrative-support/secretaries-and-administrative-assistants.htm#tab-2> (last visited May 15, 2013).

The duties the petitioner's managing partner originally attributed to the proffered position, in her November 29, 2006 letter, consisted, essentially, of "overseeing a number of administrative functions" and interpreting and translating between English and various South Asian languages.

In her July 23, 2010 letter submitted in response to the NOIR, however, the petitioner's managing partner stated that the duties of the proffered position would include processing various immigration petitions and applications, preparing motions and exhibits, and maintaining a court schedule. Although the petitioner's managing partner characterized that revised duty description as "almost exactly as originally presented," it is not.

In the "Paralegals and Legal Assistants" chapter, the *Handbook* provides the following description of the duties of those positions:

What Paralegals and Legal Assistants Do

Paralegals and legal assistants do a variety of tasks to support lawyers, including maintaining and organizing files, conducting legal research, and drafting documents.

Duties

Paralegals and legal assistants typically do the following:

- Investigate the facts of a case
- Conduct research on relevant laws, regulations, and legal articles
- Organize and present the information
- Keep information related to cases or transactions in computer databases
- Write reports to help lawyers prepare for trials

- Draft correspondence and other documents, such as contracts and mortgages
- Get affidavits and other formal statements that may be used as evidence in court
- Help lawyers during trials

Paralegals and legal assistants help lawyers prepare for hearings, trials, and corporate meetings. However, their specific duties may vary depending on the size of the firm or organization.

In smaller firms, paralegals duties tend to vary more. In addition to reviewing and organizing information, paralegals may prepare written reports that help lawyers determine how to handle their cases. If lawyers decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments and draft documents to be filed with the court.

In larger organizations, paralegals work mostly on a particular phase of a case, rather than handling a case from beginning to end. For example, a litigation paralegal might only review legal material for internal use, maintain reference files, conduct research for lawyers, and collect and organize evidence for hearings. Litigation paralegals often do not attend trials, but might prepare trial documents or draft settlement agreements.

Law firms increasingly use technology and computer software for managing documents and preparing for trials. Paralegals use computer software to draft and index documents and prepare presentations. In addition, paralegals must be familiar with electronic database management and be up to date on the latest software used for electronic discovery. Electronic discovery refers to all electronic materials that are related to a trial, such as emails, data, documents, accounting databases, and websites.

Paralegals can assume more responsibilities by specializing in areas such as litigation, personal injury, corporate law, criminal law, employee benefits, intellectual property, bankruptcy, immigration, family law, and real estate. In addition, experienced paralegals may assume supervisory responsibilities, such as overseeing team projects or delegating work to other paralegals.

Paralegal tasks may differ depending on the type of department or the size of the law firm they work for.

The following are examples of types of paralegals:

Corporate paralegals often help lawyers prepare employee contracts, shareholder agreements, stock-option plans, and companies' annual financial reports. Corporate

paralegals may monitor and review government regulations to ensure that the corporation is aware of new legal requirements.

Litigation paralegals maintain documents received from clients, conduct research for lawyers, and retrieve and organize evidence for use at depositions and trials.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Paralegals and Legal Assistants," <http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm#tab-2> (last visited May 15, 2013).

The duties of the proffered position as described in the managing partner's July 23, 2010 letter include preparing motions and processing various immigration applications and petitions. Such duties are not included in the *Handbook* description of secretary and administrative assistant positions, and are inconsistent with such positions. Instead, they show that, as described in the July 23, 2010 letter, the proffered position may be a position for a paralegal or legal assistant. Further, in that letter, the petitioner's managing partner described the proffered position as an "Administrative Assistant/Legal Specialist."

However, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities, in response to an NOIR. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). While a petitioner is certainly permitted to change its intent with regard to the proffered position, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

The duty description provided in the managing partner's July 23, 2010 letter is inconsistent with an administrative assistant position, which is how the petitioner initially designated the visa petition and which is the position for which the LCA was certified. Those duties represent an attempt, in response to the NOIR, to amend the visa petition into a petition for a paralegal or legal assistant. The AAO will not consider the revised duties described in the petitioner's managing partner's July 23, 2010 letter.

On the balance, based on the duties originally described in the petitioner's managing partner's November 29, 2006 letter, the AAO agrees with the petitioner's assertion that the proffered position, as originally described, is a secretary or administrative assistant position as described in the

Handbook.⁴ Again, the petitioner provided an LCA in support of the instant petition that corresponds to the occupational classification "Executive Secretaries and Administrative Assistants."

The *Handbook* states the following about the educational requirements of Secretary and Administrative Assistant positions:

How to Become a Secretary or Administrative Assistant

High school graduates who have basic office and computer skills usually qualify for entry-level secretarial and administrative assistant positions.

Education and Training

High school graduates can get basic office, computer, and English grammar skills in various ways: through high school vocational education programs, vocational-technical schools, or community colleges. Many temporary placement agencies also provide formal training in computer and office skills.

Employers of more specialized positions, including medical and legal secretaries, often require applicants to have some knowledge of industry-specific terminology and practices. Community colleges and vocational-technical schools usually offer instruction in these areas.

Certification

Though not required, certification can demonstrate competency to employers. Legal secretaries have a few certification options. For example, those with 1 year of experience in the legal field, or who have concluded an approved training course and who want to be certified as a legal support professional, can acquire the Accredited Legal Secretary (ALS) designation through a testing process administered by NALS.

⁴ If the AAO were to consider the revised duties described in the petitioner's managing partner's July 23, 2010 letter, that would not render the instant visa petition approvable. Rather, the AAO would then be obliged to consider the proffered position as a position for a paralegal or legal assistant, and the visa petition would not, in that event, be supported by a corresponding LCA as required. See 20 C.F.R. § 655.705(b). Under those circumstances, the AAO would remand the visa petition for further proceedings pertinent to that issue. Further, the *Handbook* does not support the proposition that paralegal and legal assistant positions necessarily qualify as specialty occupation positions, as it does not indicate that they require a minimum of a bachelor's degree in a specific specialty or its equivalent. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Paralegals and Legal Assistants," <http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm#tab-4> (last visited May 15, 2013). Therefore, classification of the proffered position as a paralegal or legal assistant position would not, *per se*, render the visa petition approvable, even if it were supported by a corresponding LCA.

NALS offers two additional designations: Professional Legal Secretary (PLS), considered an advanced certification for legal support professionals, and a designation for proficiency as a paralegal.

Legal Secretaries International confers the Certified Legal Secretary Specialist (CLSS) designation in areas such as intellectual property, criminal law, civil litigation, probate, and business law to those who have 5 years of legal experience and pass an examination. In some instances, certain requirements may be waived.

Advancement

Secretaries and administrative assistants generally advance through promotion to other administrative positions with more responsibilities. Qualified administrative assistants who broaden their knowledge of a company's operations and enhance their skills may be promoted to senior or executive secretary or administrative assistant, clerical supervisor, or office manager. With additional training, many legal secretaries become paralegals. For more information, see the profile on paralegals and legal assistants. Once hired, most secretaries and administrative assistants tend to get more advanced skills through on-the-job instruction.

Important Qualities

Computer skills. Secretaries and administrative assistants use computers for email, word processing, spreadsheets, and database management. Therefore, having good computer skills is very important.

Interpersonal skills. Secretaries and administrative assistants work with many different individuals each day. Being pleasant and attentive contributes to a positive work environment and client experience.

Organizational skills. Whether filing papers or filling out forms, secretaries and administrative assistants must make sure that files, folders, and schedules are in proper order so an office can run efficiently.

Writing skills. Secretaries frequently write memos and email when communicating with managers, employees, and customers. Therefore, they must have good grammar, ensure accuracy, and maintain a professional tone.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed. "Secretaries and Administrative Assistants," <http://www.bls.gov/ooh/office-and-administrative-support/secretaries-and-administrative-assistants.htm#tab-4> (last visited May 15, 2013).

The *Handbook* makes clear that secretary and administrative assistant positions do not require a minimum of a bachelor's degree in a specific specialty or its equivalent as a minimum entry requirement for this occupation. In fact, the *Handbook* indicates that entry-level positions can be filled by high school graduates, and that progressively more demanding secretary and administrative assistant positions may be filled by candidates with skills learned in vocational-technical schools or community colleges.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the duties that the petitioner's managing partner ascribes to the proffered position do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree in a specific specialty, or its equivalent, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

As stated earlier, in determining whether there is a common degree requirement, factors often considered by USCIS 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." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports a standard industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The petitioner's managing partner stated that, in her experience, "most high end law practices require a [bachelor's] degree for an Administrative Assistant/Legal Specialist position." However, no evidence was provided to support her assertion.

Although the statements by the petitioner's managing partner are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent. A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position of administrative assistant is so complex or unique relative to other administrative assistant positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R.

§ 214.2(h)(4)(iii)(A)(2).⁵

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a degree or its equivalent for the position.⁶ As was noted above, the petitioner's managing partner provided statements pertinent to the following former employees: (1) [REDACTED] (2) [REDACTED] (3) [REDACTED] (4) [REDACTED] and (5) [REDACTED].

The petitioner's managing partner stated that [REDACTED], [REDACTED], and [REDACTED], all worked as administrative assistants or worked in an administrative capacity for the petitioner; however, she did not state in what capacity [REDACTED] or [REDACTED] worked.

Further, although evidence was provided to corroborate the assertion that [REDACTED] worked for the petitioner, and some of the pay statements indicate that [REDACTED] also worked for the petitioner, no such evidence was provided pertinent to any of the other claimed employees. Further still, no corroborating evidence was provided pertinent to the degrees of any of the petitioner's former employees, either to show that they had such degrees, or the subject matter of those degrees. Although the petitioner's managing partner stated that such evidence would be provided pertinent to [REDACTED] that promised evidence is not in the record.

Yet further, the petitioner's managing partner did not identify all of the people whom the petitioner has employed in the proffered position. In her July 23, 2010 letter, the petitioner's managing partner stated that the petitioner had employed eight people in the proffered position. Even if the five people identified all worked in the proffered position, the remaining three people who worked in the proffered position, and the nature of the bachelor's degrees which the petitioner's managing partner stated that they have, were not identified.

⁵ The petitioner's managing partner stated, in her July 23, 2010 letter, "I must add that 'interpreter' is an accepted H1-B occupation," but provided no precedent or argument on that point. The record contains no indication that interpreting between English and another language, especially as an adjunct duty to an administrative assistant position, requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

⁶ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

For all of the reasons explained above, the petitioner has not demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position, and has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. "[O]verseeing a number of administrative functions" and translating and interpreting between English and other languages have not been shown to be so specialized and complex that they are usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of administrative assistant positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. Therefore, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has not demonstrated that the proffered position qualifies as a specialty occupation position pursuant to any of the alternative criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the appeal will be dismissed and the visa petition will remain revoked.

The record suggests an additional issue that was not addressed in the revocation letter.

The record contains evidence that the beneficiary has a bachelor's degree in liberal arts from an Indian University with a major in English and a minor in secretarial studies. An evaluation in the record dated March 2, 2004, states that this is equivalent to three years of study at an unaccredited U.S. college or university. Another evaluation in the record dated July 23, 2010, states substantially the same.

The March 2, 2004 evaluation also states that, based on a Duplicate Mark Sheet from [REDACTED] (formerly [REDACTED]), the beneficiary had passed the Master of Arts II English Examination, and that this accomplishment is equivalent to one year of university-level credit from an accredited college or university in the United States.

Yet further, that evaluation states that, based on two Statements of Marks from [REDACTED] (formerly [REDACTED]) in Agra, India, the beneficiary had passed the Master of Arts Part I examination and the Master of Arts (Final) examination. The evaluation also states that these accomplishments are equivalent to a master's degree in English from an accredited college or university in the United States.

The July 23, 2010 evaluation states, in contrast to the March 2, 2004 evaluation, that based on a Duplicate Mark Sheet from [REDACTED] (formerly [REDACTED]), the beneficiary had passed the Master of Arts II English Examination in 2001, and that this accomplishment is equivalent to a master's degree in English from an accredited college or university in the United States. This evaluation also states that based on the two Statements of Marks from [REDACTED] (formerly [REDACTED]) in Agra, India, the beneficiary passed the Master of Arts Part I examination and the Master of Arts (Final) examination, and that this is equivalent to a master's degree English from an accredited college or university in the United States.

Neither the Duplicate Mark Sheets, the Statements of Marks, nor any other evidence of those examinations at [REDACTED] or [REDACTED] is in the record. Without documentary evidence of the asserted master's degrees, the AAO will not take those additional degrees into consideration.

The evidence in the record does not show that the beneficiary has a minimum of a bachelor's degree or the equivalent in a specific specialty. This precludes approval of the visa petition. Even if the visa petition were otherwise approvable, the AAO would remand it for further proceedings pertinent to the beneficiary's qualifications.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition will remain revoked.