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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 139 51281 Office: CALIFORNIA SERVICE CENTER Date: DEC 04 2006

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.

A handwritten signature in blue ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the 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 that specializes in personal injury law. The petitioner seeks to employ the beneficiary as a Legal Management Specialist, and endeavors 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 based on a determination that the proffered position was not a specialty occupation. On appeal, counsel submits a brief and additional evidence.¹

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:

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;

¹ Attorney, Eli A. Rich, submitted a Form G-28, Notice of Entry of Appearance of Attorney (Form G-28), on behalf of the petitioner. [REDACTED] is no longer authorized to practice law by the state of California. All representations will be considered. However, [REDACTED] will not receive notice of the proceedings.

- (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.

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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director’s request for additional evidence (RFE); (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a legal management specialist. Evidence of the beneficiary’s duties includes: the Form I-129 and attachments; the petitioner’s response to the director’s RFE, and attachments; and documentation submitted on appeal. According to this evidence, the beneficiary would perform the following duties:

20% of Time:

- Collect necessary information relevant to particular personal injury practice area cases;
- Evaluate the quality of information gathered from clients, witnesses, medical practitioners, and authorities, and analyze information to determine objectivity, timeliness, accuracy, authenticity, and verification;
- Conduct investigation on new tort laws, policies, rules and regulations, and various issues in government agencies;
- Refer to, and consult with government agencies in relation to personal injury cases;
- Gather information on new tort reform initiatives, vis-à-vis area of practice;
- Conduct hands-on investigation aimed at the discovery and interpretation of facts involved in a personal injury claim.

70% of Time:

- Review and analyze all information gathered;

Provide relevant case background and present summaries with appropriate recommendations to attorneys;

Recommend legal strategy and present to attorney the most suitable method to employ in personal injury claims;

Draft affidavits and correspondence regarding pre-litigation disputes, and prepare memoranda, briefs and recommendations for case review;

Assist attorney in managing all phases of discovery, including case review, interviewing of clients, fact gathering, opening and filing insurance claims, creating demand packages, obtaining medical and employment records, and corresponding with insurance adjusters and companies and health care providers.

10% of Time:

Identify law firm problems or needs and develop efficient methods to improve operational system;

Ensure management requirements are met, and formulate management development programs to maximize office growth potential.

The petitioner states that the minimum requirement for the legal management specialist position is a baccalaureate degree in legal studies or a related area. The petitioner indicates that the beneficiary has the equivalent of a U.S. bachelor's degree in legal studies, and that he is thus qualified to perform the proffered position's duties.²

The petitioner emphasized that the proffered position involves internal advice only, and that the beneficiary would not give legal advice to clients or appear in court. As such, the petitioner emphasized that the proffered position does not require a license to practice law.

The director determined that the proffered position was not a specialty occupation. Referring to the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the proffered position description appeared, at best, to be that of a paralegal, and the director determined that a bachelor's degree is not required in order to perform the duties of a paralegal. The director found further that the parallel requirement letters and job postings submitted by the petitioner failed to establish that a bachelor's degree in legal studies or a related field is an industry-wide standard.

As previously noted, in determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly

² The evidence contains an Academic Equivalency Evaluation from Trustforte Corporation reflecting that the beneficiary has the equivalent of a Bachelor of Arts Degree in Legal Studies. Prior employment evidence contained in the record reflects further that the beneficiary is a licensed attorney in the Philippines, and that he was admitted to the Philippine Bar in May 1998.

specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

To make its determination whether the employment described qualifies as a specialty occupation, the AAO turns first to the criteria set forth 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 *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, 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 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO notes that the *Handbook* (2006-2007 Edition) does not contain a definition for a position entitled "Legal Management Specialist." The *Handbook* does, however, describe Paralegal and Legal Assistants positions on pages 207 – 208, and states in pertinent part that:

While lawyers assume ultimate responsibility for legal work, they often delegate many of their tasks to paralegals. . . . paralegals – also called legal assistants – are continuing 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 that 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 closing, 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 perform a number of other vital functions. . . . Some paralegals coordinate the activities of other law office employees and maintain financial office records. Various additional tasks may differ, depending on the employer.

Based upon a review of the described proffered position duties, and the paralegal duties described in the *Handbook*, the AAO finds that the proffered position duties fit squarely into the definition of a paralegal.

The *Handbook* discusses on page 208, the general educational requirements for individuals who seek employment as paralegals, and states in pertinent part that, “[p]aralegal programs include 2-year associate degree’s programs, 4-year bachelor’s degree programs, and certificate programs that can take only a few months to complete.” The *Handbook* states further that:

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 already have a college degree, is through a 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. . . .

In the present matter, the duties described for the proffered position are clearly reflected in the *Handbook’s* description for paralegal duties. The *Handbook* provides no bachelor’s or specific degree requirement for employment as a paralegal. Accordingly, the AAO concludes that performance of the position duties would not require the beneficiary to hold a baccalaureate or higher degree in legal studies or a related field. The petitioner has thus failed to establish that a baccalaureate or higher degree, or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position, as required by 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

To establish the proffered position as a specialty occupation under the second criterion, the petitioner must prove that a specific degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty. To establish its degree requirement as an industry norm, the petitioner has submitted three hiring requirement letters from other law firms, and four internet job advertisements. The AAO finds that this evidence fails to establish the petitioner’s degree requirement as the norm within its industry.

The petitioner asserts that three hiring requirement letters from similarly sized law firms establish that a specific degree requirement for the proffered position is common in parallel positions among similar organizations in the industry. The AAO notes first, that the law firms described in the letters are of various sizes. The AAO notes further that the three letters, one of which is from the attorney of record’s own law firm, state generally that, due to the complex nature of the law firms, the firms only employ qualified individuals who possess a minimum of a bachelor degree or its equivalent for key positions in the legal and other departments, or for professional positions. The letters do not specifically discuss the legal management specialist position or its requirements. Moreover, the record contains no evidence to establish that the law firms have employed a legal management specialist. Furthermore, the letters allow for a broad range of majors within the bachelor’s degree requirement.

The four internet job announcements submitted by the petitioner, also fail to demonstrate that a specific degree requirement for the proffered position is common in parallel positions among similar organizations in the industry. Several of the announcement descriptions differ significantly from the legal management specialist position description provided by the petitioner. Moreover, all of the job announcements submitted require only a generalized bachelor's degree, rather than a specialized degree in legal studies or a related field. The 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. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

The record also contains no documentation to reflect that any professional paralegal association has made a bachelor's degree in a specialty a requirement for entry into the field.

Accordingly, for the reasons discussed above, the petitioner has failed to satisfy the second criterion's condition that a petitioner establish its degree requirement is common in parallel positions among similar organizations.

The AAO next considers 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, CIS often reviews the petitioner's employment history, including the names and dates of employment of those employees with degrees who previously held the position, as well as the petitioner's hiring practices with regard to similar positions. In the present matter, the petitioner asserts that its previous legal management specialist [REDACTED] was a degree holder. The petitioner provides a copy of [REDACTED] bachelor's degree in law, her resume, and her certificate of admission into the Philippine Bar. The AAO notes that the submitted resume does not reflect that Ms. [REDACTED] worked for the petitioner as a legal management specialist. Furthermore, the record contains no employment contract or other evidence to establish that [REDACTED] was previously employed by the petitioner as a legal management specialist.

It is noted that the record contains an H-1B approval notice reflecting that the petitioner filed an H-1B nonimmigrant petition on [REDACTED] behalf, and that her status as an H-1B nonimmigrant was approved for the period between August 31, 2003 and June 9, 2006. The petitioner does not submit any evidence of hiring a degreed individual as a legal management specialist from the years 1992-2003. Further, the H-1B approval notice does not mention the position on which the approval was based. Additionally, the record contains none of the supporting evidence submitted to the service center in the prior case. In the absence of all of the corroborating evidence contained in the previous record of proceeding, the documents submitted by the petitioner are not sufficient to enable the AAO to determine whether the position offered in the prior case was similar to the proffered position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

No other evidence was provided with regard to the petitioner's previous hiring practices in similar positions. Accordingly, the petitioner has failed to establish that the petitioner's normal hiring practice is to require the minimum of a baccalaureate degree for the proffered position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. As previously discussed the AAO finds that the proffered position duties described by the petitioner are analogous to the duties of a paralegal, as set forth in the *Handbook*. The AAO does not find that the duties described by the petitioner reflect the need for a higher level of knowledge or skill than would normally be required of a paralegal. The AAO, therefore concludes that the petitioner has failed to establish that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based upon the above discussion, the AAO finds that the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 its burden. The appeal will therefore be dismissed and the petition will be denied.

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