

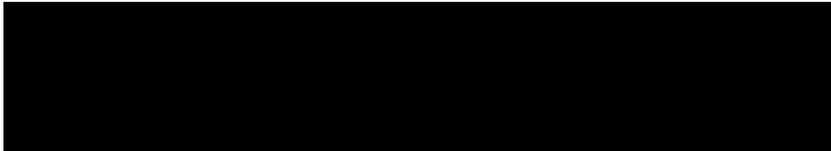


U.S. Citizenship
and Immigration
Services

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FILE: LIN 04-068-50591 Office: NEBRASKA SERVICE CENTER Date: OCT 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 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 solo practitioner law office that seeks to employ the beneficiary as a law clerk and 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 on the grounds that the petitioner failed to establish that the proffered position meets the definition of specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel submits a brief and additional evidence. The issue is whether the proffered position qualifies as 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.

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 criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

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

The petitioner seeks the beneficiary's services as a law clerk. Evidence of the beneficiary's duties includes Form I-129 with attachments and the petitioner's response to the director's request for evidence. The petitioner did not provide much detail regarding the proffered position. According to this evidence, the beneficiary's duties would include: "assisting the attorney by researching and preparing legal documents, meeting with the clients, assisting the attorney in court and handling various aspects of litigation and real estate transactions." The petitioner asserts that the position of law clerk at its office requires a bachelor's degree in "pre-law or a related field."

The director found that the proffered position was not a specialty occupation because the actual duties and level of responsibility are not so complex as to require a baccalaureate degree. The director found that, based on the duties of the proffered position and the proposed salary, the position is actually that of a paralegal or legal assistant. Further, the director determined that the proffered position failed to meet any of the required criteria for classification as a specialty occupation.

On appeal, counsel asserts that the proffered law clerk position is a specialty occupation because the Department of Labor's (DOL) *On-Line Wage Library (OLWL)* categorizes law clerk as a Job Zone Four that requires a minimum of two to four years of work related skill, knowledge, or expertise. The *OLWL* is not a persuasive source regarding whether a particular occupation is a specialty occupation. The Job Zone Four indicates only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience. In addition, it does not specify the particular type of degree, if any, that a position would require. The *OLWL* does not support the petitioner's position that a law clerk requires a degree in a specialty occupation since the law clerk entry states that two to four years of work related skill, knowledge or expertise is necessary. It does not indicate that a four-year bachelor's degree in pre-law or a related field is required. For this reason, the AAO does not rely on the *OLWL* information. Further, counsel contends that the proffered law clerk position is a specialty occupation because even though some employers do not require their law clerks to have bachelor's degrees, most of them do. Counsel correctly asserts that the wage offered does not have a bearing on whether this position is a specialty occupation.

Upon review of the record, the AAO concludes that the petitioner has failed to establish that its law clerk position meets any of the four criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) - a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. To determine 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 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.

The AAO routinely consults the DOL *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. The duties of the proffered position fall within those noted for law clerks. The *Handbook* notes that the most significant source of education for law clerks is a bachelor's degree. (p. 650). It does not indicate that the bachelor's degree need be in any specific specialty. As noted above, in order for a position to be considered a specialty occupation, it must require a degree in a specialty as a minimum for entry into the occupation. Therefore,

the petitioner failed to establish that a baccalaureate degree or higher or its equivalent in pre-law or a related field is normally the minimum requirement for entry into the proffered position.

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - the degree requirement is common to the industry in parallel positions among similar organizations. The documentation the petitioner submits in support of this assertion consists of seven job announcements for law clerks and paralegals at firms in the same geographical area as the petitioner's. Several of these employers only require general, four-year bachelor's degrees for their law clerks. They do not specify that those bachelor's degrees must be in pre-law or a related field. In one announcement, the employer requires the candidate to be enrolled in law school but does not require that the candidate have a law degree and indicates that only a general, college education is required. Three of the announcements submitted are for paralegal positions that require general bachelor's degrees. These announcements are not for law clerk positions and are not relevant to this case. Additionally, there is no evidence to show that any of these employers are similar to the petitioner, or that the law clerk position in a small law firm or a large law firm is parallel to the instant position in a solo practitioner law office. Thus, the job announcements fail to establish that a degree requirement in pre-law or a related field is common for law clerk positions in parallel positions among similar organizations.

The AAO turns next to the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - a particular position is so complex or unique that it can be performed only by an individual with a degree. Counsel asserts that the duties for the proffered position are so complex that a bachelor's degree in pre-law or the equivalent is the minimum requirement for the job. The duty description the petitioner provided for the proffered position is vague and is not distinguishable from other law clerk positions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO turns next to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - the employer normally requires a degree or its equivalent for the position. As the record does not contain any evidence of the petitioner's past hiring practices, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4): 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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The petitioner has not presented any evidence to establish that the duties of its law clerk position is distinguishable from those of other law clerks, which the *Handbook* indicates does not require a degree in a specific field. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.