



U.S. Citizenship
and Immigration
Services

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FILE: EAC 04 202 50200 Office: CALIFORNIA SERVICE CENTER Date: JAN 27 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.

Robert P. Wiemann, Director
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 seeks to employ the beneficiary as a legal assistant. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 director's denial letter; and (4) 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 assistant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's support letter. According to this evidence, the beneficiary would perform duties that entail researching statutes, decisions, and case law; preparing legal documents including briefs, pleadings, appeals, wills, and contracts; preparing affidavits; maintaining files; filing pleadings with the court clerk; calling witnesses to testify at hearings; directing and coordinating law office activities; and monitoring legal volumes to ensure the law library is current. For the proposed position the petitioner seeks to employ the beneficiary who holds a bachelor's and a master's degree in law from institutions in China, and a master's degree in public administration from the University of Toledo located in Toledo, Ohio.

In denying the petition, the director stated that the proposed duties parallel those of a paralegal and legal assistant as those occupations are described in the Department of Labor's *Online Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reveals that such occupations do not require a baccalaureate degree in a specific field.

On appeal, counsel states that the proposed position requires specialized knowledge about various legal systems, cultures, and languages; and that clientele are from China, Hong Kong, Taiwan, and other Asian countries. The proposed position requires knowledge and experience that extends beyond what is learned in high school or a paralegal certification program, counsel asserts. According to counsel, the specialty services offered by the petitioner require knowledge associated with at least a bachelor's degree in paralegal studies. Graduates without legal experience and legal secretaries who are experienced do not have the specialized body of knowledge that is required for the proposed position, counsel maintains. Counsel states that the *Handbook's* information pertains to general-practice firms and large firms that require a file clerk, and that it does not apply to the petitioner, a boutique law firm. Counsel states that the petitioner does not have the resources to train a paralegal or a legal assistant, and that bachelor's and master's degree programs provide paralegal studies and relevant work experience. Counsel submits into the record information about a paralegal certificate and a baccalaureate degree in paralegal studies, and states that the latter degree encompasses the petitioner's areas of practice, whereas a paralegal certificate does not. Counsel asserts that the proposed position requires specialized knowledge in international and corporate law, immigration, consular affairs, family law, and intellectual property (domestic and international trademark and copyright), and that graduates of paralegal programs and associate degree holders do not possess this knowledge.

Upon review of the record, the petitioner has established none 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 first considers 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; 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 often considered by CIS when determining these criteria 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 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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 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.

In a May 7, 2004 letter, counsel states that the *O*Net* shows that the proposed position qualifies as a specialty occupation. Counsel's reference to and assertions about the relevance of information from the *O*Net* is not persuasive. Neither a specific vocational preparation [REDACTED] rating nor a [REDACTED] category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An [REDACTED] rating and [REDACTED] category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The AAO often consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The director correctly found that the proffered position resembles a paralegal and legal assistant. In the 2004-2005 edition of the *Handbook*, a paralegal, also called a legal assistant, is described as follows:

One of a paralegal's most important tasks is helping lawyers prepare for closings, hearings, trials, and corporate meetings. Paralegals investigate the facts of cases and ensure that all relevant information is considered. They also identify appropriate laws, judicial decisions, legal articles, and other materials that are relevant to assigned cases. After they analyze and organize the information, paralegals may prepare written reports that attorneys use in determining how cases should be handled. Should attorneys decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments, draft pleadings and motions to be filed with the court, obtain affidavits, and assist attorneys during trials. Paralegals also organize and track files of all important case documents and make them available and easily accessible to attorneys.

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

Paralegals are found in all types of organizations, but most are employed by law firms, corporate legal departments, and various government offices. In these organizations, they can work in many different areas of the law, including litigation, personal injury, corporate law, criminal law, employee benefits, intellectual property, labor law, bankruptcy, immigration, family law, and real estate. As the law has become more complex, paralegals have responded by becoming more specialized. Within specialties, functions often are broken down further so that paralegals may deal with a specific area. For example, paralegals specializing in labor law may deal exclusively with employee benefits.

The duties of paralegals also differ widely based on the type of organization in which they are employed. Paralegals who work for corporations often assist attorneys with employee contracts, shareholder agreements, stock-option plans, and employee benefit plans. They also may help prepare and file annual financial reports, maintain corporate minute books and record resolutions, and prepare forms to secure loans for the corporation. Paralegals often monitor and review government regulations to ensure that the corporation is aware of new requirements and it operates within the law.

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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 on improper police arrests or help prepare a mortgage contract. Paralegals employed by large law firms, government agencies, and corporations, however, are more likely to specialize in one aspect of the law.

Counsel's assertion that the *Handbook's* information pertains only to general-practice firms and large firms that require a file clerk is not convincing. The *Handbook's* information relates to a boutique law firm such as the petitioner, as it conveys that paralegals work in all types of organizations and that most are employed by law firms, corporate legal departments, and government offices. The *Handbook* also relays that paralegals work in many different areas of the law, including immigration, family law, intellectual property, and corporate law, which are the petitioner's specialty areas.

The proposed duties mirror those of a paralegal (also known as a legal assistant) as that occupation is reported in the *Handbook*. The beneficiary will research statutes, decisions, and case law; prepare legal documents including briefs, pleadings, appeals, wills, and contracts; prepare affidavits; maintain files; file pleadings with the court clerk; call witnesses to testify at hearings; direct and coordinate law office activities; and ensure the law library is current. The *Handbook's* description of a paralegal encompasses these duties as it states that paralegals "investigate the facts of cases," "identify appropriate laws, judicial decisions, legal articles, and other materials," "prepare written reports that attorneys use in determining how cases should be handled," help "prepare the legal arguments, draft pleadings and motions to be filed with the court, obtain affidavits, and assist attorneys during trials," and "organize and track files."

To qualify for a paralegal position, the *Handbook* 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 *Handbook's* information, employers do not require a baccalaureate degree in a specific specialty for a paralegal position as the most common way to become a paralegal is to obtain an associate's degree in a paralegal program or have a college degree and obtain certification in paralegal studies.

The AAO concludes, based on the evidence in the record and the *Handbook*, that the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submitted no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence establishes the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The *Handbook* reveals that the proposed position parallels that of a paralegal (also known as a legal assistant), and that the occupation does not require a baccalaureate degree in a specific specialty.

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) requires that the petitioner establish that it normally requires a degree or its equivalent for the position. The record contains no evidence to establish this criterion.

To establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) the petitioner must show that the nature of the specific 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 in a specific specialty. As discussed earlier, the *Handbook* reveals that the proposed duties mirror those of a paralegal (also known as a legal assistant), and that that occupation does not require a bachelor's degree in a specific specialty. The petitioner, therefore, fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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Page 7

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.