



U.S. Citizenship
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Services

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FILE: EAC 05 218 52273 Office: VERMONT SERVICE CENTER Date: DEC 13 2007

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, 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 office that seeks to employ the beneficiary as a project assistant/paralegal. 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.

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

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

Section 214(i)(1) of the 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;
- (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) consistently interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

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

The petitioner seeks the beneficiary's services as a project assistant/paralegal. Evidence of the beneficiary's duties includes: the petitioner's July 29, 2005 letter in support of the petition and the petitioner's response, dated December 7, 2005, and resubmitted on March 8, 2006, to the director's RFE. As stated by the petitioner's owner in his July 29, 2005 letter, the proposed duties are as follows:

[The beneficiary] will be performing administrative and litigation support, including factual research on active cases, filing small claims, witness interviews, preparation of exhibits, document review and selection for deposition and trial, testimony review and preparation of cross-examination for trial, claim letters, review and editing of legal pleadings, as well as legal training and development in anticipation of attending law school.

As stated by the petitioner's owner in response to the director's RFE, the proposed duties are as follows:

- Writing claim letters;
- Drafting complaints;
- Responding to complaints, counterclaims and discovery requests;

- Reviewing discovery produced by opponents and evaluating objections to discovery requests made by opponents;
- Writing evaluations of legal options available to potential clients;
- Conducting and making written records of witness interviews and assisting in the preparation of witnesses for direct and cross-examination at trial;
- Preparing time lines and exhibits for trial;
- Performing legal research; and
- Using computer programs: Time Map, Westlaw, Lexis Nexis, Microsoft PowerPoint, and Microsoft Office.

The director found that the proposed project assistant/paralegal duties do not require a bachelor's degree. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, under the categories of *Paralegals and Legal Assistants* and *Secretaries and Administrative Assistants*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner's owner states, in part, that the proffered position is not an ordinary paralegal position and thus qualifies as a specialty occupation because the beneficiary will handle many of the same issues handled by himself and his associate with the exception of appearing in front of a judge. The petitioner's owner also states that the beneficiary is more than a legal secretary, and that she utilizes her English degree every day in her writing, research, and proofreading skills. He states further that other Northern Virginia law firms and his own former law firm also require that their paralegals/research assistants hold a bachelor's degree.

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 turns first to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the petitioner that the proffered position is a specialty occupation. Noted is the petitioner's owner's assertion that the proffered position is not an ordinary paralegal position because the beneficiary will handle many of the same issues handled by himself and his associate with the exception of appearing in front of a judge. Also noted is his assertion that the proffered position is unlike the paralegal position described in the *Handbook*.

The AAO disagrees with the petitioner's assertions.

The *Handbook*, 2006-07 edition, under the category of Paralegals and Legal Assistants states, in part:

[P]aralegals – 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 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. . . .

No evidence in the *Handbook*, 2006-07 edition, indicates that a baccalaureate or higher degree, or its equivalent, is required for a paralegal job. The most common way to become a paralegal is through a community college paralegal program that leads to an associate's degree. Further, employer preference is not synonymous with the normally required language of the regulation. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary. Accordingly, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(I).

The petitioner's owner submits the results of his own survey whose subjects assert that positions such as the proffered position require a bachelor's degree. The petitioner's owner states on appeal that he received letters and emails from Northern Virginia law firms and his own former law firm stating that they require their paralegals to hold at least a bachelor's degree. The record, however, does not establish the survey participants as experts on industry-wide recruiting and hiring practices regarding paralegals/legal assistants. In addition, the survey responses do not indicate the requirement of a bachelor's degree in a specific specialty. Furthermore, the survey responses are not probative, as the record does not contain evidence of the hiring

practices of the firms participating in the survey. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). It is noted here that the *Handbook* is a compilation of results of nationwide industry questionnaires, surveys and personal interviews by the DOL, and indicates that there is no specific degree requirement for entry into the field. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In view of the foregoing, the petitioner has not demonstrated that a baccalaureate or higher degree in a specific specialty is required for the proffered position. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the 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 counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the 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 knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Counsel states, on appeal, that the proffered position is not an ordinary paralegal position and the beneficiary will handle many of the same issues handled by himself and his associate with the exception of appearing in front of a judge.

As discussed above, the information in the record about the proposed duties does not establish that they exceed in scope, specialization, or complexity those usually performed by paralegals and legal assistants, an occupational category for which the *Handbook* indicates no requirement for or usual association with a baccalaureate or higher degree in a specific specialty. 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. 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).

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.

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.