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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

D2



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 29 2010

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:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Perry Rhew*  
Perry Rhew  
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 seeks to employ the beneficiary as a case manager/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, finding that the proffered position is not a specialty occupation. On appeal, the petitioner submits a brief and additional evidence.

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 RFE; (4) the director's denial letter; and (5) the Form I-290B, with the petitioner's brief and documentation in support of the appeal. 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 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, 8 U.S.C. § 1184(i)(1), 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 particular positions 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 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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.

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. *Cf. 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.

The petitioner is a law firm that was established in 1993. It claims that the majority of its clientele is from the Korean-American community, and states that 90% of its clients speak Korean and 70% of clients speak only Korean. The petitioner seeks the beneficiary's services as a case manager/paralegal. In a letter of support dated March 31, 2009, the petitioner described the proposed position as follows:

The position involved in this application is that of Case Manager/Paralegal to manage various cases for Korean clientele in immigration matters. The case manager will provide client intake, review legal documents, handle filing calendar and serve as a liaison between attorneys, staff, and clients within a complex bilingual environment.

The Case manager will be assigned to specific cases brought in by the firm and will be responsible for handling the management of those cases. In immigration cases, the Case manager will be assigned to obtain necessary documentation, gather missing information and provide reports to clients on the status of their cases, and processing with various governmental agencies. Upon the completion of the gathering and investigation of the documentation, the Attorney assigned to the case will determine the strengths and weaknesses of the information. It will be the duty of the Case manager to ensure that the case proceeds in a timely and organized manner.

The vast majority of the clients of [the petitioner] are Korean Americans, many of whom have been in the U.S. for only a short period of time and do not speak English. He or she will be required to translate legal documents and explain the workings of the immigration system to the clients. The Case manager must not only help clients overcome the language barriers, but also the difference of culture and law.

The petitioner concluded by stating that it required the incumbent to have at least a bachelor's degree in political science, criminal justice, international legal affairs, or a related field.

In a request for evidence dated April 22, 2009, the director requested additional evidence demonstrating that the proffered position was a specialty occupation. Specifically, the director requested more details regarding the beneficiary's duties, as well as information on other employees in similar positions and their educational backgrounds. In addition, the director requested evidence to demonstrate that the degree requirement was common for parallel positions in similar industries as well as evidence that the duties of the position were so complex that they could only be performed by a person with a bachelor's degree in a specific specialty.

In a response dated May 28, 2009, the petitioner addressed the director's queries. The petitioner claimed that the proffered position qualified as a specialty occupation under three of the four criteria set forth in the regulations; namely: (1) the position offered to the beneficiary is so complex and/or unique that it can be performed only by an individual with a degree; (2) the employer normally requires a degree or its equivalent for the position of Case manager/Paralegal; and (3) the nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner briefly explained its position regarding these criteria, noting that the beneficiary was fluent in and a native speaker of Korean. In addition, the petitioner contended that all

of its personnel possessed at least a four-year degree. However, the AAO notes that apart from its May 28, 2009 letter, the petitioner provided no documentary evidence to support these claims.

The director denied the petition, finding that the proposed paralegal/legal assistant duties do not require a bachelor's degree. Citing the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 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 asserts that it has shown that the proffered position is a specialty occupation, noting that the petitioner has established the three criteria cited above. In support of this contention, the petitioner submits one job posting from Robert Half Legal of Seattle for the position of paralegal. No additional evidence is submitted.

Upon review of the record, the AAO concurs with the director's decision and finds that the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, it cannot be found that the proffered position is a specialty occupation.

As a preliminary matter, the AAO notes that, on appeal, the petitioner submits a job posting for the first time in support of the contention that a bachelor's degree is required for parallel positions in similar industries. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaighbena*, 19 I&N Dec. 533 (BIA 1988). The director's RFE issued on April 22, 2009 specifically requested job postings from similar organizations in the petitioner's industry in support of the premise that a degree was common in the industry. However, the petitioner failed to respond to this issue in its May 28, 2009 response to the RFE. If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

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 USCIS 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 proposed position qualifies as a specialty occupation, USCIS 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 *Handbook* for its information about the duties and educational requirements of particular occupations.

Although the proffered position includes the title of "case manager," a review of the *Handbook* indicates that the section pertaining to paralegals and legal assistants is most closely aligned with the proffered position as described. As the *Handbook* does not indicate that the paralegal or legal assistant occupational category normally requires at least a bachelor's degree, or the equivalent, in a specific specialty, this aspect of the proffered position does not appear to require at least a bachelor's degree level of knowledge in a specific specialty. The "Paralegals and Legal Assistants" chapter of the 2010-2011 edition of the *Handbook* states, in pertinent part:

Most entrants have an associate's degree in paralegal studies, or a bachelor's degree in another field and a certificate in paralegal studies. Some employers train paralegals on the job.

**Education and training.** There are several ways to become a paralegal. The most common is through a community college paralegal program that leads to an associate degree. Another common method of entry, mainly for those who already have a college degree, is earning a certificate in paralegal studies. A small number of schools offer bachelor's and master's degrees in paralegal studies. Finally, some employers train paralegals on the job.

According to the *Handbook*, a baccalaureate or higher degree, or its equivalent, is not normally required for a paralegal. The most common way to become a paralegal is through a community college paralegal program that leads to an associate's degree. Accordingly, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. It is here worthwhile to repeat the AAO's earlier statement in this decision that, consonant with the pertinent sections of the Act and the related USCIS implementing regulations, 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.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. As discussed above, the petitioner submitted no evidence to establish eligibility under this criterion. The petitioner submitted no documentation from other similar law firms in the industry, nor did it submit documentation from the State bar association, local bar associations, other professional associations of practicing attorneys, or professional associations of persons serving in the type of position proffered in this petition attesting that a bachelor’s degree in a specific specialty, or its equivalent, is the standard minimum educational credential required for entry into the proffered position. Moreover, the petitioner has likewise failed to submit letters or affidavits from firms or individuals in the industry which attest that such firms “routinely employ and recruit only degreed individuals.”

Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations. Therefore, the proposed position does not qualify for classification as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Furthermore, the AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a demonstration that the position is so complex or unique that it can only be performed by an individual with at least a bachelor’s degree, or its equivalent, in a specific specialty. According to the job description of the proffered position, it appears that the paralegal will have similar job duties to those described in the *Handbook*; thus the evidence of record does not establish the proposed position as unique from or more complex than the general range of such positions. While the AAO notes that the beneficiary is fluent in Korean, the fact that the beneficiary is bilingual and may deal primarily with Korean-speaking clients does not make the position complex or unique under this criterion. Moreover, the AAO notes that the petitioner finds acceptable a variety of degrees, from political science to criminal justice to international legal affairs or other related fields which therefore precludes classification as a specialty occupation under this criterion.

In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment as a paralegal. Moreover, the evidence of record about the particular position that is the subject of this petition does not establish how aspects of the position, alone or in combination, make it so unique or complex that it can be performed only by a person with at least a bachelor’s degree in a specific specialty or its equivalent. 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. In response to the RFE, the petitioner claimed that all of its employees hold at least a bachelor’s degree. However, the record does not contain any corroborating evidence of the employment of these persons with the petitioner, nor is there evidence of the other employees’ educational backgrounds. 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)).

In addition, the AAO observes that the petitioner's desire to employ an individual with a bachelor's degree or equivalent does not establish that the position is a specialty occupation. The critical element is not the title of the position or 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. To interpret the regulations any other way would lead to absurd results. If USCIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Accordingly, the AAO finds that the record does not establish the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). 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 the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner provides a general overview of the duties of the proposed position in the initial letter of support and in response to the request for evidence. The petitioner, however, has not established that the duties to be performed exceed in scope, specialization, or complexity those usually performed by paralegals, an occupational category that does not normally require a baccalaureate or higher degree in a specific specialty or its equivalent. The AAO finds nothing in the record to indicate that the beneficiary, in her role as a paralegal at the petitioner's place of business, would face duties or challenges any more specialized and complex than those outlined in the *Handbook*.

To the extent that they are depicted in the record, the duties of the proposed position 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. Again, there is no information in the record to support a finding that the proposed position is more complex or unique than similar positions in other, similar organizations. As the *Handbook* reveals, such organizations do not normally impose a bachelor's degree requirement in a specific specialty. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Therefore, for the reasons related in the preceding discussion, the proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. The proposed position in this petition is not a specialty occupation, so the beneficiary's qualifications to perform its duties are inconsequential. Accordingly, the AAO will 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.