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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:

[REDACTED]

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,

*Michael T. Kelly*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The director of the California 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 with three employees. It seeks to employ the beneficiary as a real estate clerk 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 concluding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's denial letter; and (3) Form I-290B with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

The primary issue in this matter 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 one 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner states that it is seeking the beneficiary's services as a real estate clerk. In the March 27, 2009 letter of support, the petitioner described its offices as providing a wide range of legal services, including litigation, real estate, immigration, criminal defense, corporate work, probate, international business, and other areas. The petitioner claimed that the beneficiary's duties would include the following:

- Review real estate contracts, loan documents, promissory notes, and mortgage documents;
- Monitor, research and analyze law sources to keep abreast of real estate issues and laws;
- Update attorney on research findings;
- Communicate and arbitrate disputes between parties involved in the closing process;
- Prepare and analyze title reports and review title abstracts; and
- Draft and prepare real estate closing statements and assist in the closing process.

The petitioner stated its minimum degree requirement for the proffered position is a bachelor's degree. The petitioner did not indicate that it requires a bachelor's degree in a specific specialty. The petitioner also submitted documentation evidencing that the beneficiary has a U.S. Master of Science Degree with a concentration in real estate.

The director denied the petition on May 2, 2009, finding that the proffered position is not a specialty occupation, noting that the proffered duties are closest to those performed by paralegals and legal assistants as described in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*.

On appeal, the petitioner elaborated on each of the above-listed proffered duties as follows:

- Analyze the facts of the specific case and apply the pertinent legal theories related to the issue or document to produce the proper filing and execution;
- Analyze, evaluate and distinguish applicable laws to inform the attorney of possible legal consequences;
- Research, analyze and determine which new laws apply to the attorney's clients' situations;
- Apply knowledge of legal concepts in real estate to resolve disagreements;
- Analyze and apply theories of real estate law, such as laws of encumbrances, liens, judgments, etc. to determine their effects upon the clients' rights in each and every case; and
- Applying specialized knowledge of laws to the facts in order to properly produce documents to be signed and recorded with municipal clerks.

The petitioner also stated that some of the beneficiary's coursework, such as legal issues in real estate, real estate investment/finance, real estate market analysis, and urban and community analysis are directly relevant to the performance of the proffered duties.

Additionally, the petitioner describes itself and the beneficiary's position on appeal as follows:

The Petitioner is a law firm which predominantly handles commercial and residential real estate cases, e.g. purchases, closings, contract analyses and disputes, etc., for the greater Chinese community. They have several real estate closings a week, sometimes several closings in one day, which equates to a large volume of various real estate cases. Commercial real estate sales and purchases involve e.g., large, complex contracts, zoning issues, and plats of surveys, which must be obtained and analyzed. The beneficiary works closely with the Attorney, analyzing these documents as well as legal complexities and financial consequences of the transactions, and determining what type of input is required. As a Real Estate Clerk, the beneficiary resolves title issues and decides the income and property tax consequences of the real estate transaction process. She must analyze state and local regulations (e.g. new municipal zoning laws, or state tax changes etc.) to inform the Attorney of the consequences of such regulations on real estate transactions. She obtains zoning approvals and researches how to obtain "village stamps (tax payment proof)" in order to facilitate the completion of a real estate closing. She examines title commitments and analyzes the law to see whether encumbrances exist which affect the Attorney's clients' positions. Whether the client is a particular corporation, or an individual, she must apply pertinent laws to the facts to determine the correct preparation of deeds and other recorded (final) documentation. There are different types of corporate entities such as LLCs, partnerships, regular corporations, closed corporations, etc., which the beneficiary must ascertain and determine in terms of applicability of laws in order to properly produce the documents. She has to apply intricate knowledge of financial instruments such as mortgages and security agreements to help resolve complex contractual problems.

This description of the petitioner provided on appeal, which characterizes the petitioner as predominantly a corporate real estate legal practice, is different from the description initially provided as a general legal services practice, including litigation, real estate, immigration, criminal defense, corporate work, probate, international business, and other areas. The petitioner has not provided any supporting documentation to

demonstrate that it is primarily a corporate real estate legal practice where the beneficiary will devote the majority of her time analyzing complex corporate real estate legal issues that require the theoretical and practical application of a body of highly specialized knowledge. 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)).

The AAO agrees with the director's assessment that the proffered duties are closest to that of a paralegal or legal assistant as described in the *Handbook* (2010-11 online edition). The *Handbook's* position description of paralegals and legal assistants is as follows:

Although lawyers assume ultimate responsibility for legal work, *they often delegate many of their tasks to paralegals*. In fact, paralegals—also called legal assistants—are *continuing to assume new responsibilities in legal offices and perform many of the same tasks as lawyers*. Nevertheless, they are explicitly prohibited from carrying out duties considered to be within the scope of 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 might 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. If 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 functions. For example, they help *draft contracts, mortgages, and separation agreements*. They also may assist in preparing tax returns, establishing trust funds, and planning estates. Some paralegals coordinate the activities of other law office employees and maintain financial office records.

Computer software packages and the Internet are used to search legal literature stored in computer databases and on CD-ROM. In litigation involving many supporting documents, paralegals usually use computer databases to retrieve, organize, and index various materials. Imaging software allows paralegals to scan documents directly into a database, while billing programs help them to track hours billed to clients. Computer software packages also are used to perform tax computations and explore the consequences of various tax strategies for clients.

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 becomes more complex, paralegals become more specialized. Within specialties, functions are often broken down further. For example,

paralegals specializing in labor law may concentrate exclusively on employee benefits. *In small and medium-size law firms, duties are often more general.*

The tasks of paralegals differ widely according to the type of organization for which they work. Corporate paralegals 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 minutes' record resolutions, and prepare forms to secure loans for the corporation. Corporate paralegals often monitor and review government regulations to ensure that the corporation is aware of new requirements and is operating within the law. Increasingly, experienced corporate paralegals or paralegal managers are assuming additional supervisory responsibilities, such as overseeing team projects.

The duties of paralegals who work in the public sector usually vary by agency. In general, litigation paralegals analyze legal material for internal use, maintain reference files, conduct research for attorneys, and collect and analyze evidence for agency hearings. They may prepare informative or explanatory material on laws, agency regulations, and agency policy for general use by the agency and the public. Paralegals employed in community legal-service projects help the poor, the aged, and others who are in need of legal assistance. They file forms, conduct research, prepare documents, and, when authorized by law, may represent clients at administrative hearings.

(Emphasis added.) The petitioner's description of the proffered position, which entails helping the attorney prepare for closings, analyzing the facts and laws, and drafting documents, clearly falls under this section of the *Handbook* on paralegals and legal assistants.

Regarding the minimum requirements for paralegals and legal assistants, the *Handbook* states that "[m]ost 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." Because the *Handbook* indicates that entry into a paralegal or legal assistant occupation does not normally require a bachelor's or higher degree or its equivalent in a specific specialty, the *Handbook* does not support the proffered position as being a specialty occupation. Additionally, the petitioner's own stated requirements are that the proffered position requires a bachelor's degree, without specifying that the bachelor's degree must be in a specific specialty. Moreover, to the extent that they are described in the record, the duties comprising the proffered position appear to fall within the general functions normally performed by paralegal or legal assistants, but the nature and level of education and/or equivalent training and experience required to perform those functions are not self-evident. The petitioner provides no documentary evidence distinguishing any aspect of the proffered position from paralegal or legal assistant positions not requiring the application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. Again, 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS 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 petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The petitioner provides no evidence indicating that similar employers require at least a bachelor's degree in a specific specialty for the proffered position.

The petitioner has also not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." The petitioner did not submit any documentation to evidence that the proffered position requires a degree in a specific specialty. Moreover, as reflected in this decision's earlier comments regarding the duties comprising the proffered position, the record of proceeding does not contain evidence that distinguishes the proffered position as unique from or more complex than paralegal or legal assistant positions that can be performed by persons without a specialty degree or its equivalent.

As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As reflected in this decision's earlier comments regarding the duties of the proffered position, the petitioner provided no supporting evidence that the proffered duties are more specialized and complex than paralegal and legal assistant positions that are not usually associated with at least a bachelor's degree in a specific specialty.

For the reasons discussed above, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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The petition will be denied and the appeal dismissed. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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