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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

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: NOV 03 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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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
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 paralegal/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, finding that (1) the proffered position is not a specialty occupation; and (2) the beneficiary was not qualified to perform the duties of 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 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 first 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 (5th 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 seeks the beneficiary's services as a paralegal and legal assistant. In a letter of support dated March 31, 2007,¹ the petitioner described the proposed position as follows:

[The beneficiary] is being offered a position as a Paralegal for [the petitioner]. As a Paralegal, [the beneficiary] will be handling cases [for] corporations and individuals around the world. Because one of our firm's primary practices is Immigration Law, we often work with international corporations and individuals from foreign countries.

As a paralegal, [the beneficiary] will be responsible for assisting the lawyers with preparation of various types of employment and family based visa applications. Although he will be work[ing] with the family aspect of immigration, he will specialize in employment-based immigration for our larger corporate clients.

[The beneficiary] will also aid lawyers in the preparation of documents for Court Petitions and appearances. His work will include managing the master calendar for court appearances and assisting the head attorney in the preparation of documents and arrangement of court files. He will be working with both immigration and litigation cases. [The beneficiary] will also manage two (2) assistants.

[The beneficiary] will also be responsible for meeting with clients to prepare routine immigration forms and to collect information. Finally, [the beneficiary] will be responsible for a portion of marketing and the procuring of new clients for the firm.

The petitioner continued by claiming that the minimum educational requirement for the position of paralegal in the petitioner's organization was a four-year college degree as well as several years of legal experience.

In a request for evidence dated July 3, 2008, 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 a response dated August 11, 2008, the petitioner addressed the director's queries. In addition to providing four additional online job postings for the position of paralegal in the industry, the petitioner provided the following updated description of the duties of the proffered position:

As a paralegal/legal assistant at our firm, [the beneficiary] will assume the responsibility of preparing and organizing Asylum applications for filing in Immigration Court. The preparation of Asylum applications entail[s] a tremendous amount of organization and attention to detail. The incumbent will spend a great deal of time and effort reviewing

¹ It appears that the year 2007 is a typographical error and that the letter was intended to bear the date of March 31, 2008.

documents presented by clients, interviewing clients, gathering information, writing testimonies, and arranging applications as per immigration court regulations.

[The beneficiary] will have to conduct client interviews to fully understand the situation and stories of the clients. These stories are vital in an asylum application because they are the basis for which the applicant is granted relief. [The beneficiary] will have to pay close attention to detail and produce testimonies reflecting the client's hardship and traumatizing experiences. Moreover, some of our clients come to our office having been to other countries and applied for asylum, or having previously applied here in the United States. In this situation, [the beneficiary] will have to acquire and review the client's previous asylum file, and address any discrepancies and verify all claims and previous statements.

Another grand component of preparing and filing successful asylum applications is research. Every application requires that a great deal of research be performed. Even before our office accepts a case for asylum, we perform preliminary research to ensure that the applicant is a good candidate for asylum. [The beneficiary] will be required to research country reports, political reports, articles which support the case and political parties which may endanger the asylum applicant.

In addition, the petitioner contended that it previously employed several people in the proffered position of paralegal. The petitioner claimed that it currently employs [REDACTED] as a paralegal and indicated that she possesses a bachelor's degree in accounting as well as several years of experience in real estate law. The petitioner further indicated that she was temporarily replacing [REDACTED] in this position, who held a bachelor's degree from Pace University and was currently serving in the U.S. Military. Additionally, the petitioner indicated that it employed [REDACTED] as a senior paralegal and claimed that she possesses three years of college and four years of experience working with the petitioner. The petitioner concluded that the combination of her experience and education is equivalent to a bachelor's degree. Finally, the petitioner claimed that it employed [REDACTED], holder of a juris doctor degree from the Philippines, in the position of paralegal/legal assistant. No independent documentary evidence to corroborate these claims was submitted.

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 the director erroneously relied solely on the *Handbook* in determining that the proffered position was not a specialty occupation. Specifically, counsel contends that the *Handbook* does not address the size and scope of employers in determining labor trends, and contends that since law firms are generally diverse in size and area of practice, the statements set forth in the *Handbook* are not applicable to the petitioner. Counsel asserts that the job postings submitted in support of the petition, and not the *Handbook's* findings, accurately reflect the degree standard in the petitioner's industry.

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.

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.

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 required for a paralegal/legal assistant. The most common way to become a legal assistant/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.

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.

It is noted that the petitioner's main argument on appeal is that the *Handbook* is not a fair compilation of information with regard to the position of paralegal in that the size and scope of law firms can vary greatly, from a solo practitioner to a large international firm with multiple offices. The petitioner urges USCIS to rely on a copy of model standards for paralegals set forth by the National Association of Legal Assistants (NALA) when determining whether the position qualifies as a specialty occupation. A review of the model standards from NALA, however, indicates that a bachelor's degree in a specific specialty is not required for entry into the position of paralegal or legal assistant. Rather, NALA, like the *Handbook*, indicates that generally, paralegal certification or completion of an ABA approved paralegal program is sufficient to perform the duties of the proffered position. While NALA also indicates that a bachelor's degree in any specialty, coupled with a minimum of six months of experience, is also acceptable for entry into the profession, the fact remains that a bachelor's degree in a *specific specialty* is not required.

The petitioner submitted no other 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."

Regarding parallel positions in the petitioner's industry, the petitioner submits Internet job postings for paralegals. The postings initially submitted with the petition specify only a requirement for a high school diploma or a paralegal certification. Although most of the listings submitted in response to the RFE stipulate the requirement of a bachelor's degree, they do not stipulate a bachelor's degree in a specific specialty. Moreover, it is noted that the job advertisement from Yorkson Legal, identified as a legal staffing resource, states that "actors" are preferred. Finally, the listings do not indicate that the businesses publishing the advertisements are similar to the petitioner in size, number of employees, or level of revenue. Thus, the advertisements are insufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

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 a degree. According to the job description of the proffered position, it appears that the paralegal/legal assistant 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. Moreover, the AAO notes that the petitioner finds acceptable a degree with a generalized title, which 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 and legal assistant. 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 several of its paralegals hold either bachelor's degrees or possess sufficient experience in the industry which, combined with education, is equivalent to 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/legal assistants, 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 his 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 director also determined that the beneficiary would not be qualified to work in the proffered position even if it had been found to be a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the proffered position does not require a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the AAO will not address the beneficiary's qualifications further.

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.