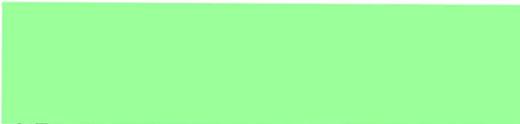




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JAN 25 2013** OFFICE: VERMONT SERVICE CENTER FILE: 

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)

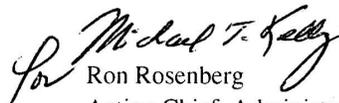
ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office



**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on July 22, 2011. On the Form I-129 visa petition, the petitioner describes itself as a law firm established in 2002, with eight employees. In order to employ the beneficiary in what it designates as a law clerk position, the petitioner seeks to classify her 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 on two separate and independent bases, namely, his determinations that the evidence in the record of proceeding failed to establish (1) that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions; and (2) that the beneficiary is qualified to perform services in a specialty occupation. On appeal, counsel asserts that the director's bases for denial of the petition were erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before the AAO contains: (1) the petitioner's 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 notice of decision; and (5) the petitioner's Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue for consideration is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable 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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*Specialty occupation* means an occupation which [(1)] 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 [(2)] 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, a proposed 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 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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular 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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In the letter of support, dated July 7, 2011, the petitioner states that the beneficiary will be responsible for the following duties:

- Search for and study legal documents to investigate facts and law of cases, to determine causes of action and to prepare cases[;]
- Prepare affidavits of documents and maintain document files and case correspondence[;]
- Prepare and file simple legal pleadings, motions, correspondence and forms[;]
- Deliver or direct delivery of documents to witnesses and parties to actions[;]
- Serve copies of pleas to opposing counsel[;]
- Arrange transportation and accommodation for witnesses and jurors, if required[;]
- Preparing [sic] varies [sic] immigration forms and supporting documents for filing, check updates of immigraitno [sic] regulations and decisions[;]
- Advise the clients to prepare for affidavits and other written statements under the supervision of attorney[;]
- Draft correspondences [sic] to immigration authorities, liasons [sic], agencies and courts[;] [and]
- Monitoring [sic] all case schedules. Litigation deadlines, store and catalog[.]

In addition, the petitioner states the following regarding the educational requirement for the proffered position:

In order to perform these tasks, special training, such as a Baccalaureate degree is a minimum requirement. The holder of this position is expected to have education and experience in the areas of law or business management or law and business management related areas. It is unlikely, in fact, that an applicant for this position not holding a baccalaureate degree would be accepted.

The petitioner also states the following:

[The beneficiary] received a Master Degrees [sic] in the major of Business Management (MBA)<sup>1</sup> from [redacted] [s]tate in the major of Business Management.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant petition. The petitioner asserts in the LCA that the proffered position falls under the occupational category "Law Clerks" – SOC (O\*NET/OES) Code 23-2092.00, at a Level I prevailing wage rate. The AAO notes that the O\*NET-SOC code 23-2092.00 is no longer in use and has been updated with O\*NET-SOC code 23-2011.00, "Paralegals and Legal Assistants."

Upon review of the documentation, the director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on August 4, 2011. The petitioner was asked to submit documentation to establish (1) that a specialty occupation position exists for the beneficiary; and (2) that the beneficiary qualifies for a specialty occupation. The director outlined the specific evidence to be submitted.

On October 19, 2011, the petitioner responded to the director's RFE. In a letter in response to the RFE, dated October 17, 2011, the petitioner reiterated the aforementioned job description of the proffered position. In addition, the petitioner provided the percentage of time and number of hours per week that the beneficiary would spend performing each duty:

1. Search for and study legal documents to investigate facts and law of cases, to determine causes of action and to prepare cases[;]
2. Prepare affidavits of documents and maintain document files and case correspondence[;]
3. Prepare and file simple legal pleadings, motions, correspondence and forms[;]

Duties from 1-3, [the beneficiary] spends 30% of her time on these job duties (for working regular 40 hours a week, she spends 12 hours per week on these duties).

4. Deliver or direct delivery of documents to witnesses and parties to actions[;]
5. Serve copies of pleas to opposing counsel[;]
6. Arrange transportation and accommodation for witnesses and jurors, if required[;]

Duties from 4-6, [the beneficiary] spends 30% of her time on these job duties (for working regular 40 hours a week, she spends 12 hours per week on these duties).

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<sup>1</sup> The AAO notes that the copy of the beneficiary's degree that was submitted with the petition indicates that the beneficiary received a "Master of Business Administration" degree.

7. Preparing [sic] varies [sic] immigration forms and supporting documents for filing, check updates of immigration regulations and decisions[;]
8. Advise the clients to prepare for affidavits and other written statements under the supervision of attorney[;]
9. Draft correspondences [sic] to immigration authorities, liaisons, agencies and courts[;] [and]
10. Monitoring [sic] all case schedules. Litigation deadlines store and catalog[.]

Duties from 7-10, [the beneficiary] spends 40% of her time on these job duties (for working regular 40 hours a week, she spends 16 hours per week on these duties).

In addition, the petitioner submitted, *inter alia*, (1) a letter from the petitioner, dated October 17, 2012, with the petitioner's organizational chart and a description of each position; (2) a letter from the petitioner, dated October 17, 2011, stating that "it is industry standard practice to accept an applicant with a baccalaureate degree in Legal Study, Business Management, International Business Management, International Study or the related areas" for the proffered position; (3) a Credentials Evaluation Report, by [redacted] Chief Evaluator, [redacted] [redacted] dated September 15, 2011, opining that the beneficiary's foreign education is equivalent to a U.S. Bachelor of Science degree in Applied Chemistry from a regionally accredited college or university in the United States; (4) a copy of the beneficiary's alleged transcript in Chinese from [redacted] and a copy of the alleged English translation of the transcript by [redacted], to indicate that the beneficiary took a course titled, "Law Foundation;" (5) a copy of the beneficiary's transcript from [redacted], to indicate that the beneficiary took a course titled "Law 508 – Legal Environment of Business;" (6) copies of certain documentation for the petitioner's current H-1B law clerk, namely, a copy of the Form I-129 Approval Notice along with a copy of the petitioner's letter of support, a copy of the certified LCA, copies of the 2009 and 2010 W-2 Wage and Tax Statements, and copies of the June 2011 to September 2011 payroll checks, and a copy of this individual's Master of International Management in International Business degree and transcript from [redacted]; and (7) copies of certain documentation for the petitioner's former H-1B law clerk, including, but not limited to, copies of this individual's foreign bachelor's and master's degrees in law and a copy of his Master of Laws degree from [redacted].

The director reviewed the information provided by the petitioner to determine whether the petitioner had established eligibility for the benefit sought. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish (1) how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty; and (2) that the beneficiary is qualified to perform services in a specialty occupation. The director denied the petition on November 2, 2011.

The petitioner submitted a timely appeal of the denial of the H-1B petition.

Based upon a complete review of the record of proceeding, the AAO will make some preliminary findings that are material to the determination of the merits of this appeal.

To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

As a preliminary matter, the AAO notes that the petitioner asserted that a bachelor's degree is required for the law clerk position, but the petitioner did not assert that a bachelor's degree in a *specific specialty* is required. Rather, the petitioner indicates, in its letter of support, dated July 7, 2011, that it will accept a degree in "Legal Study, International Business Management or the related areas." To establish eligibility for H-1B classification, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. USCIS has consistently stated that, although a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

In its letter of support, dated July 7, 2011, the petitioner states that the beneficiary "received a Master Degrees [sic] in the major of Business Management (MBA)"<sup>2</sup> and that her "education [sic] background will serve the job well." The AAO notes that the petitioner's acceptance of, as a qualifying credential, the beneficiary's master's degree (described by the petitioner as a master's degree in "Business Management (MBA)" but that, in fact, was - as annotated on the diploma - awarded for "Business Administration" only, without any recognition of a specialty or particular concentration) is not indicative of a specialty occupation position.

To demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business

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<sup>2</sup> As the AAO noted earlier, the beneficiary's degree is actually titled "Master of Business Administration." There is, in fact, no statement in the academic transcript or in the diploma documents submitted into the record of proceeding that the degree was awarded in any particular specialization in the broad area of Business Administration. In fact, the AAO observes, the space on the academic transcript for "Specializations" is blank, and the transcript's space for "Majors" just states "MBA."

administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. As noted above, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.<sup>3</sup>

Again, the petitioner in this matter (1) states that a bachelor's degree is required, but it does not indicate that a bachelor's degree in a *specific specialty* is required; and (2) claims that the duties of the proffered position can be performed by an individual with only a general-purpose degree, i.e., a master's degree in business administration. These assertions are tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Moreover, it also cannot be found that the proffered position is a specialty occupation due to the petitioner's failure to satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

To reach this conclusion, the AAO first reviewed the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The petitioner stated that the beneficiary would be employed in a law clerk position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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. *See generally Defensor v. Meissner*, 201 F.3d

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<sup>3</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[T]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

*Id.*

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 a specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>4</sup> As previously discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Law Clerks" – SOC (O\*NET/OES) Code 23-2092.00, at a Level I prevailing wage rate. Also, as discussed above, the AAO notes that the O\*NET-SOC code 23-2092.00 is no longer in use and has been updated with O\*NET-SOC code 23-2011.00, "Paralegals and Legal Assistants."

The AAO reviewed the chapter of the *Handbook* entitled "Paralegals and Legal Assistants," including the sections regarding the typical duties and requirements for this occupational category.<sup>5</sup> However, the *Handbook* does not indicate that "Paralegals and Legal Assistants" comprise an occupational group that categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty. The "Paralegals and Legal Assistants" chapter of the 2012-2013 edition of the *Handbook* describes the duties of such positions<sup>6</sup> as follows:

Paralegals and legal assistants do a variety of tasks to support lawyers, including maintaining and organizing files, conducting legal research, and drafting documents.

### Duties

Paralegals and legal assistants typically do the following:

- Investigate the facts of a case
- Conduct research on relevant laws, regulations, and legal articles
- Organize and present the information
- Keep information related to cases or transactions in computer databases
- Write reports to help lawyers prepare for trials
- Draft correspondence and other documents, such as contracts and

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<sup>4</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. The AAO's references to the *Handbook* are to the 2012 - 2013 edition available online.

<sup>5</sup> For additional information regarding the occupational category "Paralegals and Legal Assistants," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Paralegals and Legal Assistants, available on the Internet at <http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm#tab-1> (last visited December 17, 2012).

<sup>6</sup> The AAO treats the proffered position of "law clerk" herein as synonymous to "paralegal" and "legal assistant."

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- Get affidavits and other formal statements that may be used as evidence in court
- Help lawyers during trials

Paralegals and legal assistants help lawyers prepare for hearings, trials, and corporate meetings. However, their specific duties may vary depending on the size of the firm or organization.

In smaller firms, paralegals duties tend to vary more. In addition to reviewing and organizing information, paralegals may prepare written reports that help lawyers determine how to handle their cases. If lawyers decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments and draft documents to be filed with the court.

In larger organizations, paralegals work mostly on a particular phase of a case, rather than handling a case from beginning to end. For example, a litigation paralegal might only review legal material for internal use, maintain reference files, conduct research for lawyers, and collect and organize evidence for hearings. Litigation paralegals often do not attend trials, but might prepare trial documents or draft settlement agreements.

Law firms increasingly use technology and computer software for managing documents and preparing for trials. Paralegals use computer software to draft and index documents and prepare presentations. In addition, paralegals must be familiar with electronic database management and be up to date on the latest software used for electronic discovery. Electronic discovery refers to all electronic materials that are related to a trial, such as emails, data, documents, accounting databases, and websites.

Paralegals can assume more responsibilities by specializing in areas such as litigation, personal injury, corporate law, criminal law, employee benefits, intellectual property, bankruptcy, immigration, family law, and real estate. In addition, experienced paralegals may assume supervisory responsibilities, such as overseeing team projects or delegating work to other paralegals.

Paralegal tasks may differ depending on the type of department or the size of the law firm they work for.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Paralegals and Legal Assistants, available on the Internet at <http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm#tab-2> (last visited December 17, 2012).

The subchapter of the *Handbook* entitled "How to Become a Paralegal or Legal Assistant" states,

in part, the following about this occupation:

Most paralegals and legal assistants have an associate's degree in paralegal studies, or a bachelor's degree in another field and a certificate in paralegal studies. In some cases, employers may hire college graduates with a bachelor's degree but no legal experience or education and train them on the job.

### **Education**

There are several paths to become a paralegal. Candidates can enroll in a community college paralegal program to earn an associate's degree. A small number of schools also offer bachelor's and master's degrees in paralegal studies. Those who already have a bachelor's degree in another subject can earn a certificate in paralegal studies. Finally, some employers hire entry-level paralegals without any experience or education in paralegal studies and train them on the job, though these jobs typically require a bachelor's degree.

Associate's and bachelor's degree programs in paralegal studies usually combine paralegal training, such as courses in legal research and the legal applications of computers, with other academic subjects. Most certificate programs provide this intensive paralegal training for people who already hold college degrees. Some certificate programs only take a few months to complete.

More than 1,000 colleges and universities offer formal paralegal training programs. However, only about 270 paralegal programs are approved by the American Bar Association (ABA).

Many paralegal training programs also offer an internship, in which students gain practical experience by working for several months in a private law firm, the office of a public defender or attorney general, a corporate legal department, a legal aid organization, or a government agency. Internship experience helps students improve their technical skills and can enhance their employment prospects.

*Id.*, Paralegals and Legal Assistants, available on the Internet at <http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm#tab-4> (last visited December 17, 2012).

When reviewing the *Handbook*, the AAO must note again that the petitioner designated the prevailing wage for the proffered position as wage for a Level I (entry level) position on the LCA.<sup>7</sup> This designation is indicative of a comparatively low, entry-level position relative to

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<sup>7</sup> Wage levels should be determined only after selecting the most relevant Occupational Information Network (O\*NET) code classification. Then, a prevailing wage determination is made by selecting one

others within the occupation.<sup>8</sup> That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results.

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty is normally the minimum requirement for entry into this occupation. Rather, the *Handbook* states that most paralegals and legal assistants have an associate's degree in paralegal studies, or a bachelor's degree in another field and a certificate in paralegal studies. The narrative of the *Handbook* indicates that there are several educational paths to become a paralegal, including obtaining an associate, baccalaureate or master's degree in paralegal studies, as well as earning a certificate in paralegal studies (for those who already have a bachelor's degree in another subject). For entry into the occupation, the *Handbook* indicates that some employers hire paralegals without any experience or education in paralegal studies and train

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of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf).

<sup>8</sup> The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

**Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

*Id.*

them on the job. The *Handbook* states that these jobs typically require a bachelor's degree. The *Handbook* does not conclude that normally the minimum requirement for entry into these positions is at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the *Handbook* does not support the petitioner's claim that the proffered position falls within an occupational group that categorically qualifies as a specialty occupation.

The AAO notes that in the letter in response to the RFE, dated October 17, 2011, the petitioner states that the *Foreign Labor Certification Data Center Online Wage Library* places law clerks under a designation of "O\*NET JobZone 5" and "Education & Training Code: 5-Bachelor's degree." The petitioner appears to believe that these designations indicate that the proffered position is a specialty occupation. However, the O\*NET information is insufficient to establish that the position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty or its equivalent. The O\*NET information does not demonstrate that a bachelor's degree in any *specific specialty* is required, and does not, therefore, demonstrate that a position so designated qualifies as a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Therefore, despite the petitioner's assertion to the contrary, the O\*NET information is not probative of the proffered position being one for which at least a bachelor's degree, or the equivalent, in a specific specialty is normally required for entry.

Upon review of the totality of the evidence in the entire record of proceeding, the AAO concludes that the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that there is a categorical requirement for at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the particular position that is the subject of this petition is one for which a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will review the evidence of record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This first alternative prong calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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)).

Here and as already discussed, the petitioner has not established that its proffered position is one

for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Thus, the AAO incorporates by reference its previous discussion on the matter.

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Based upon a complete review of the record, the AAO finds that the petitioner has not established that a requirement for at least a bachelor's or higher degree in a specific specialty, or its equivalent, 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. Thus, for the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent.

In the instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of law clerk. Specifically, the petitioner failed to demonstrate how the law clerk duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. While the courses listed on the copy of the beneficiary's transcript for the Master of Business Administration degree from [REDACTED] may be beneficial in performing certain duties of a law clerk position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate (or higher) degree in a specific specialty, or its equivalent, are required to perform the duties of the particular position here proffered.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the AAO incorporates by reference and reiterates its earlier discussion that the LCA indicates a wage level based upon the occupational classification "Law Clerks" at a Level I (entry level) wage. This designation is appropriate for positions for which the petitioner expects the beneficiary to have a basic understanding of the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with claims that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services of a person with

at least a bachelor's degree in a specific specialty. As previously noted, the petitioner reported the offered wage for the proffered position as \$29,952 per year. Notably, the prevailing wage for "Paralegals and Legal Assistants" was \$73,070 per year for a Level IV position (a difference of over \$43,000 from the petitioner's offered wage).<sup>9</sup>

The AAO finds that the evidence in this record of proceeding does not rebut or refute the *Handbook's* information to the effect that there are several paths available for entry into law clerk positions, e.g., associate degree, on-the-job training, and/or paralegal certificate. Further, the AAO finds that the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than law clerk positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. In this regard, the AAO finds that there is nothing in the constellation of constituent duties as presented in this record of proceeding that distinguishes them as more complex or unique than the general range of duties generic to the occupation in general, or that distinguishes the proffered position as more complex or unique than law clerk positions that can be performed by persons without at least a bachelor's degree, or the equivalent, in a specific specialty.

Consequently, as the evidence in the record of proceeding does not show that the proffered position is more complex or unique relative to other law clerk positions that do not require the services of a person who has attained at least a baccalaureate degree in a specific specialty, or its equivalent, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the position.

While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone, without evidence substantiating it as factually correct, is insufficient to establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular

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<sup>9</sup> For additional information regarding the prevailing wages for paralegals, see the All Industries Database for 7/2010 - 6/2011 for Paralegals and Legal Assistants at the Foreign Labor Certification Data Center, Online Wage Library, available on the Internet at <http://www.flcdatacenter.com/OesQuickResults.aspx?code=23-2011&area=35644&year=11&source=1> (last visited December 17, 2012).

position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

In a letter submitted in response to the RFE, dated October 17, 2011, the petitioner claims that the educational requirement for the law clerks that it employs is a "Bachelor[']s degree in Legal Study, Business Management, International Business management, International Study or the related areas." The petitioner did not provide any documentary evidence regarding its recruitment efforts for its law clerk positions. However, in this same RFE response letter, the petitioner claims that it employs "five law clerks. . . . One law clerk . . . graduated from Law School for [sic] LLM degree; one law clerk graduated from international business management for the MBA degree[;] . . . one law clerk graduated from college for the major of socialology [sic] for a Bachelor's degree[;] one law clerk graduated from MBA program of business management[;] . . . [and] one law clerk graduated from a business management in college from [sic] Hong Kong. All the law clerks graduated from college and have at least [a] bachelor's degree or its equivalent levels." Given that the petitioner states that it accepts degrees in various specialties for the position of law clerk at its firm, and given its past claimed recruitment history of accepting for the proffered position degrees in various specialties that appear to be substantially different in the particular underlying bodies of knowledge that merits their status as specialties, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a *specific specialty*.

The AAO observes that, in the aforementioned letter submitted in response to the RFE, dated

October 17, 2011, and in the Appeal Brief, dated December 27, 2011, the petitioner noted that USCIS had approved other petitions that had been previously filed by the petitioner on behalf of two other employees for the proffered position.<sup>10</sup> The director's decision referenced the prior approvals of the other nonimmigrant petitions. In the director's decision denying the present petition, dated November 2, 2011, the director states - correctly, the AAO finds - that

[I]t is not clear that the facts set forth in these prior petitions, or the evidence presented to USCIS, i[s] similar to the instant petition; therefore, the existence of these approved petitions does not establish the job position's eligibility for the classification. Furthermore, as each petition must stand on its own merits, these prior approvals are immaterial to these proceedings.

If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of another of the petitioner's employees, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

As previously discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the position. *See* 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

Upon review of the record, the petitioner has not provided probative evidence that it normally requires at least a bachelor's degree, or the equivalent, in a specific specialty for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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<sup>10</sup> In the letter submitted in response to the RFE, dated October 17, 2011, the petitioner stated that it "has petitioned for two H-1B law clerks before. One is currently still working as [a] law clerk for the [p]etitioner and the other ha[s] left [the] firm to return to the [sic] law school." The petitioner provided documentary evidence to show that one of these individuals has a Master of International Management in International Business degree from [REDACTED] and that the other individual has a foreign bachelor's and a master's degrees in law, and a Master of Laws degree from [REDACTED]. The petitioner provided copies of these individuals H-1B approval notices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that 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 in a specific specialty or its equivalent.

Upon review of the record of the proceeding, the AAO notes that relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that their nature is more specialized and complex than the nature of duties in positions not requiring knowledge usually associated with at least a bachelor's degree in a specific specialty or its equivalent. In this regard, the AAO finds that the proposed duties are described in terms of generalized functions that appear generic to the pertinent occupation in general, and that, as such, the petitioner has not presented the duties with sufficient specificity and substantive detail to establish that their performance would require knowledge usually associated with the attainment of at least a bachelor's degree in a specific specialty closely related to the duties of the position.

Also, the AAO here incorporates this decision's earlier discussion regarding the Level I wage-level designated in the LCA submitted to support this petition. The AAO finds that the petitioner's submission of an LCA certified for a Level I wage-level (the lowest of four possible wage levels), is not consistent with the level of complexity required to partially satisfy the present criterion.

The petitioner has submitted insufficient evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The AAO, therefore, concludes that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined 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 need not and will not address the beneficiary's qualifications further.

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.

(b)(6)

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