



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF W-W-&A-, P.C.

DATE: JULY 22, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a law practice, seeks to temporarily employ the Beneficiary as a “paralegal” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in denying the petition.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

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) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (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.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted 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 proposed 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “paralegal.” In response to the Director’s request for evidence (RFE), the Petitioner provided the following job duties for the position (verbatim):

- Assist attorney in conducting research on Chinese laws, regulations, and government guidelines using a variety of electronic legal databases and public information databases. Review contracts. Conduct business and/or technical research through review of articles and databases. Assist attorneys in gathering and analyzing research data. (15% of total work time)
- Correspond and communicate with clients; act as liaison between clients and attorneys. Assist attorneys with interviewing clients and investigating facts in complex commercial, corporate, intellectual property, civil, criminal, matrimonial, and immigration cases, among others. Review, summarize, and outline evidence and case documents. Explain legal proceedings and legal concept to clients. Draft affidavits for clients. (15% of total work time)
- Support attorneys in drafting, revising, and filing court documents and legal papers, including summonses, pleadings, discovery materials, subpoenas, motions, appeals, and other technical documents. (15% of total work time)

- Assist attorneys with researching, analyzing, and summarizing relevant legal precedent; prepare a digest of points of law involved; analyze appellate records to isolate facts pertinent to distinct legal issues. Utilize a variety of legal research tools as well as public information databases and other resources to research case or program-specific legal matters, and assist with assigned areas of criminal or civil proceedings (e.g., electronic discovery). (15% of total work time)
- Draft correspondence with courts, opposing counsel, and clients; draft other documents. (5% of total work time)
- Under attorneys' guidance and supervision, inform clients of their legal rights and obligations and suggest particular courses of action. (10% of total work time)
- Draft factual and legal memoranda for specific cases. (10% of total work time)
- Interpret and translate legal documents and case information both orally or in writing, from Chinese to English and vice-versa. (5% of total work time)
- Organize office affairs, including maintaining court schedule, managing hearing dates and motion activities; maintain attorney contacts and calendars. (5% of total work time)
- All other secretarial duties as required. (5% of total work time)

According to the Petitioner, the position requires a bachelor's degree.¹ In addition, the Petitioner requires the incumbent be familiar with Mandarin Chinese and Cantonese.

III. ANALYSIS

On appeal, the Petitioner asserts that the Director erred in its decision concluding that that the Petitioner had not established eligibility for the H-1B petition to be approved. Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.² Specifically, the record (1) contains inconsistent information regarding the proffered position; and (2) does not establish that

¹ The Petitioner has provided inconsistent information regarding the requirements for the proffered position. For instance, the Petitioner stated in response to the RFE that the proffered position requires a bachelor's degree in law but, in the same letter, the Petitioner later stated that the position requires a bachelor's degree in Chinese law. On appeal, the Petitioner states that the position requires a bachelor's degree in legal studies. No explanation for the variance was provided by the Petitioner.

² Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.³

A. Labor Condition Application

We now turn to the labor condition application (LCA) submitted in support of the H-1B petition, in which the Petitioner designated the proffered position under the occupational category “Paralegals and Legal Assistants” corresponding to the Standard Occupational Classification code 23-2011 at a Level I wage. In the appeal brief, however, the Petitioner states that the duties and skills of the proffered position are significantly greater and go beyond what is expected of even the most skilled paralegals. The Petitioner reports that a candidate must be familiar with Mandarin Chinese and Cantonese to qualify for the proffered position. According to the Petitioner, the proffered position “bears more similarity to Foreign Law Consultant” and references the American Bar Association Model Rule for the Licensing and Practice of Foreign Legal Consultants and the Fordham International Law Journal.

The U.S. Department of Labor (DOL) guidance states that wage levels should be determined only after selecting the most relevant occupational code classification. Then, a prevailing wage determination is made by selecting one 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. Factors to be considered when determining the wage level for a position include the complexity of the job duties, as well as the levels of judgment, supervision, and understanding required to perform the job duties.

DOL guidance states that a Level I (entry) wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific instructions on required tasks and expected results.⁴ A Level I wage should be considered for research fellows, workers in training, or internships.

According to DOL guidance, an indication that the job request warrants a wage determination at a Level I would be a requirement for years of education and/or experience that are generally required as described in the Occupational Information Network (O*NET) Job Zones. The occupational

³ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

⁴ U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

category “Paralegals and Legal Assistants,” has been assigned an O*NET Job Zone 3, which groups it among occupations for which medium preparation is needed. More specifically, most occupations in this zone “require training in vocational schools, related on-the-job experience, or an associate’s degree.” See O*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones>, for a discussion of Job Zone 3.

Therefore, the Petitioner’s designation of the proffered position at a Level I on the LCA suggests that the Petitioner’s academic and/or professional experience requirements for the proffered position would be less than “training in a vocational school, related on-the-job experience, or an associate’s degree.”

The Petitioner’s assertion that the proffered position requires a significant level of responsibility and expertise, as well as a foreign language requirement, do not appear to be reflected in the wage level chosen by it on the LCA.⁵ The statements regarding the claimed level of complexity, independent judgment and understanding required for the proffered position, as well as the requirements, appear to be materially inconsistent with the certification of the LCA for a Level I position.⁶ This conflict challenges the overall credibility of the petition in establishing the nature of the proffered position and in what capacity the Beneficiary will be employed. Therefore, we are precluded from finding that the proffered position is a specialty occupation. Nevertheless, we will now analyze the evidence of record.

B. First Criterion

We first turn to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), 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. To inform this inquiry, we recognize DOL’s *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁷

⁵ A petitioner must distinguish its proffered position from others within the occupation through the proper wage level designation to indicate factors such as 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. Through the wage level, the Petitioner reflects the job requirements, experience, education, special skills/other requirements and supervisory duties.

⁶ It must be noted that a language requirement other than English in a job offer generally is considered a special skill for all occupations (with the exception of Foreign Language Teachers and Instructors, Interpreters, and Caption Writers). In the instant case, the Petitioner has not established that its foreign language requirement has been reflected in the wage-level for the proffered position.

⁷ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

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The Petitioner designated the position under the occupation “Paralegals and Legal Assistants” on the LCA, therefore, we reviewed the subchapter of the *Handbook* entitled “How to Become a Paralegal or Legal Assistant.” The *Handbook* reports, in relevant part: “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.”⁸ It further specifies, “There are several paths a person can take to become a paralegal. Candidates can enroll in a community college paralegal program to earn an associate’s degree.” It also states that “many employers prefer, or even require, applicants to have a bachelor’s degree.” According to the *Handbook*, “Employers sometimes hire college graduates with no legal experience or legal education and train them on the job.”

The *Handbook* does not support the Petitioner’s assertion that a bachelor’s degree in a specific specialty is required for entry into this occupation. Rather, the *Handbook* indicates that there are various paths to enter into this occupation, such as obtaining an associate’s degree in paralegal studies or a college degree in an unrelated field. The *Handbook* reports that employers sometimes hire individuals who have earned a degree but have no legal experience/education. This passage of the *Handbook* does not indicate that there are any specific degree requirements for these jobs.

In support of the appeal, the Petitioner submits a letter from [REDACTED]. In his letter, [REDACTED] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) lists the duties proposed for the Beneficiary; and (3) states that these duties require at least a bachelor’s degree in law. We carefully evaluated [REDACTED] assertions in support of the instant petition but, for the following reasons, determined his letter does not have significant weight in this matter.

First, [REDACTED] expertise, regarding current industry degree requirements for paralegal positions is not established in the record. His supporting documentation indicates that most of his experience over the past 30 years has been in an academic setting as a faculty member within a university’s school of law. His prior experience was a research analyst (February 1973 – December 1973), followed by managerial positions (1973 – 1982).

Moreover, [REDACTED] has not provided sufficient information to establish his expertise on the practices of organizations seeking to hire paralegals. Without further clarification, it is unclear how his education, training, skills or experience would translate to expertise regarding the current recruiting and hiring practices of “offices of lawyers” (as designated by the Petitioner in the petition) or similar organizations for paralegals (or parallel positions).

In addition, there is no indication that [REDACTED] possesses sufficient knowledge of the Petitioner’s proffered position and its business operations. [REDACTED] listed the duties of the proffered position as described by the Petitioner in its response to the RFE. He does not demonstrate or assert in-depth

⁸ 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*, 2016-2017 ed., Paralegals and Legal Assistants, available at <http://www.bls.gov/ooh/legal/print/paralegals-and-legal-assistants.htm> (last visited July 21, 2016).

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knowledge of the Petitioner's specific business operations or how the duties of the position would actually be performed in the context of the Petitioner's business enterprise. For example, there is no evidence that he has visited the Petitioner's business, observed the Petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

Furthermore, [REDACTED] opinion letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the Petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements. [REDACTED] states that he has published articles in the field; however, according to his curriculum vitae his most recent publication was in 2004 (over 10 years ago) – and his curriculum vitae does not reflect that he has published any works on the academic/experience requirements for paralegals (or related issues).

Even assuming [REDACTED] possessed expertise on the degree requirements for paralegals, his opinion letter does not substantiate his conclusions, such that we can conclude that the Petitioner has met its burden of proof. First, [REDACTED] does not reference, cite, or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation. Second, the record does not indicate whether [REDACTED] was aware that, as indicated by the Level I wage on the LCA, the Petitioner considered the proffered position to be an entry-level paralegal position for a beginning employee who has only a basic understanding of the occupation. In other words, the Petitioner has not demonstrated that [REDACTED] possessed the requisite information to adequately assess the nature of the position and appropriately determine parallel positions based upon the job duties and level of responsibilities.

For the reasons discussed, we find that [REDACTED] opinion letter lends little probative value to the matter here. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988) (The service is not required to accept or may give less weight to an advisory opinion when it is “not in accord with other information or is in any way questionable.”).

The Petitioner has not provided sufficient documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

C. Second Criterion

The second criterion presents two, alternative prongs: “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[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong

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contemplates the common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the "degree requirement" (i.e., a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

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)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."⁹ Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

We 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 support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner submitted descriptions of the proffered position and information regarding its business operations. On appeal, the Petitioner states that the proffered position includes complex job responsibilities. However, the Petitioner designated the proffered position as an entry-level position within the occupational category by selecting a Level I wage. This designation, when read in combination with the Petitioner's job descriptions and the *Handbook's* account of the requirements for this occupation, further suggests that the particular position is not so complex or unique that the duties can only be performed an individual with bachelor's degree or higher in a specific specialty, or its equivalent.

⁹ For the reasons already discussed, the letter from [REDACTED] is not probative in this matter.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references her qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

D. Third Criterion

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 in a specific specialty, or its equivalent, for the position.

To merit approval of the petition under this criterion, 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 performance requirements of the position. While a petitioner may assert that a proffered position requires a specific degree, that statement alone without corroborating evidence cannot 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 created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

On appeal, the Petitioner asserts that it "has always required a Bachelor degree in a related field" for the proffered position. The Petitioner submitted documentary evidence (including diplomas, transcripts, resumes, and employment forms); however, the record does not include evidence establishing that the persons to whom the evidence relates held substantially the same position with the same or similar substantive responsibilities, duties, and performance requirements as the position proffered in this petition. Further, we also note that only two job postings were submitted into the record, although the Petitioner has been in business since 1988.

In addition, the content of the job postings weigh against the proposition that the Petitioner normally requires at least a bachelor's degree *in a specific specialty*, or the equivalent, for the proffered position. We base this finding upon the postings' statement of educational requirements, which reads, "Must have a BA or BS, or Bachelor's degree in law." Specifying a "BA or BS" as acceptable, without limiting majors or academic concentrations, suggests that the Petitioner does not normally require that the qualifying degree be in law or any other specific specialty.

Without more, the Petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Therefore, it has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

E. Fourth Criterion

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 them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

While the Petitioner provided a more detailed job description in response to the RFE, the description does not establish that the duties are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (of the lowest of four assignable wage-levels) relative to others within the occupational category.¹⁰ Without further evidence, the Petitioner has not demonstrated that its proffered position is one with specialized and complex duties as such a position within this occupational category would likely be classified at a higher-level, requiring a substantially higher prevailing wage.¹¹

Although the Petitioner asserts that the nature of the specific duties is specialized and complex, the record lacks sufficient evidence to support this claim. Thus, the Petitioner has submitted inadequate probative evidence to satisfy the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

¹⁰ The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

¹¹ A Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage. For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

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The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of W-W-&A-, P.C.*, ID# 17250 (AAO July 22, 2016)