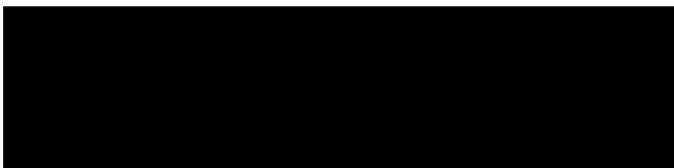


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U.S. Citizenship
and Immigration
Services



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FILE: WAC 03 046 54875

Office: CALIFORNIA SERVICE CENTER

Date: JAN 04 2005

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: 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 nonprofit religious publisher established in 2000 to promote Bible study among Chinese Christians. The petitioner 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Immigration and Nationality Act (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must 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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as Christian literature translator for 20-40 hours each week. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 15, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: translating English texts into Chinese and copy editing the translation. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in any of a variety of fields.

The director found that the proffered position was not a specialty occupation because the proffered position does not require a bachelor's degree in a specific specialty and because the translation subjects do not involve translation of "highly technical documents in a particular specialty occupation" requiring the knowledge of a particularly specialty occupation such as medicine, computers, etc., for which "knowledge in that occupation would be absolutely critical." The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the position requires fluency in Chinese and English plus a "thorough familiarity" with theological doctrines and the historical context of the original texts. He asserts that because a translator rates an SVP of 7 in *The Dictionary of Occupational Titles (DOT)* published by the Department of Labor (DOL), it is a job requiring "up to four years of relevant education." On appeal counsel cites the Northeast Ohio Translators Association Web site as stating that a bachelor's degree is needed for becoming a translator, submits job ads called for bachelor's degrees for translators, and submits a letter from another Christian publisher that asserts that all of those it hires to translate written texts hold bachelor's degrees. Counsel further cites an AAO opinion decided in January 2003 that an industrial products company translator belonged to a specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not 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 CIS 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. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. According to the *Handbook*, for translators and interpreters "a bachelor's degree is almost always required," although the degree need not be in language or in any other field; for work in a more technical field, such as engineering or finance, such a position often requires a master's degree. As a degree in a wide

range of fields is acceptable as a minimum requirement for entry into the occupation, the petitioner cannot establish that a degree in a particular specialty is required. The petitioner has not met the first criterion.

Counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. The *DOT's* SVP indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education and experience, and it does not specify the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for translators. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The majority of the advertisements also require only a nonspecific bachelor's rather than one in a specific field of knowledge. Thus, the advertisements have little relevance.

The record also includes evidence from a professional translators association, as indicated above, regarding an industry standard requiring a bachelor's for entry into the field. The Northeast Ohio Translators Association Web site does not assert that all translators must have a university degree in a specialized field; rather, for fields such as science, engineering or business, a specialized degree is typical. In the instant case, however, instead of requiring a degree in a specialty area, the petitioner is offering the position to someone who has "at least a bachelor's degree in literal arts [sic], social science, economics, business administration."

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. The petitioner has not established that a baccalaureate in a specific specialty is a minimum requirement for entry into the field.

Counsel further submits a September 26, 2003 letter from the Blessings Foundation, a Christian publisher, which claims that each member of its editorial staff has a bachelor's degree plus some seminary coursework. The petitioner, however, does not establish whether the foundation is similar in size in terms of revenue or number of employees or whether those positions are close parallels to that proffered by the petitioner. Further, the letter does not establish that a degree in a specific specialty is required for its editorial staff. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (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. The record does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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. To the extent that they are depicted in the record, the duties 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. While the *Handbook* makes clear that translators in certain technical fields would need advanced degrees, the petitioner has not established that the position requires specialized training in theology or religion.

Counsel cites a non-precedent AAO decision finding that a translator “for [an] industrial products and supplies export company” is in a specialty occupation. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of the proceeding. 8 C.F.R. § 103.2(b)(16)(ii). Further, while 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director’s denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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