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U.S. Citizenship and Immigration Services

D1

[redacted]

FILE: WAC 05 032 52272 Office: CALIFORNIA SERVICE CENTER Date: JUN 07 2006

IN RE: Petitioner: [redacted]

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:

[redacted]

INSTRUCTIONS:

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

Robert P. Wiemann, 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 sustained. The petition will be approved.

The petitioner is a translation service specializing in the medical/healthcare field. It seeks to employ the beneficiary as a business operations specialist and to continue her classification 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 the ground that the proffered position does not qualify as a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

As provided in 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 evidence (RFE); (3) the petitioner's response thereto; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In its initial submission, including Form I-129 and an accompanying letter, the petitioner described itself as a language services business, established in 1994, with six employees and gross annual income of approximately $1.5 million. The petitioner stated that it translates medical, technical, legal, and other documents into over 50 languages, utilizing a database of more than 2,000 freelance translators, proofreaders, and editors. To augment its Spanish language capabilities and service the needs of its growing clientele in that language, especially in the healthcare, biotechnology, and pharmaceutical fields, the petitioner wishes to employ the beneficiary as a business operations specialist at an annual salary of $44,000. The duties of the proffered position, and the percentage of time required by each, were described as follows:

65% [The beneficiary] will be responsible for and involved in the entire life cycle of our services, from start to finish. Specifically, she will serve as client liaison, plan, coordinate and manage the project, inception through billing. She will manage the production log, confer with staff to outline the work plan, assign duties and responsibilities, proofread linguists' work, and assure quality control. Additionally, she will screen and audit the linguists for proficiency and consistencies.

20% [The beneficiary] will utilize desktop publishing in various languages and translate documents as needed and analyze and proofread translations for correctness and completeness as well as extensive use of the leading translation industry software tools, such as Trados and SDLX. She will also resolve problems, provide technical advice and set standards for glossaries and language.

15% [The beneficiary] will develop, document and implement policies and procedures to ensure smooth operations of the organization, project and account, and for workflow. In addition, she will participate and represent the company at industry trade association meetings and communicate with clients, prepare project reports and assist with billing support functions.

According to the petitioner, the minimum educational requirement for the proffered position is a bachelor's degree or its equivalent in language/translation or a related field. Among its six employees, the petitioner explains, three occupy the same position as that proffered to the beneficiary and all of them have baccalaureate or higher degrees. The beneficiary is qualified for the proffered position, the petitioner declares, by virtue of her bachelor of arts in foreign languages, focusing on English, from the National University of Honduras, awarded on March 6, 1997, and her master of arts in translation and interpretation, Spanish-English, from the Monterey Institute of International Studies in Monterey, California, awarded on May 13, 2000. The petitioner points out that the beneficiary was granted H-1B status in May 2002, ostensibly for a similar position – business operations specialist – with similar duties, pursuant to a petition filed by another U.S. company, Magnus International Trade Service. The beneficiary began working for the petitioner in May 2004 as a technical translator, six months prior to the filing of the instant petition.

In response to the RFE the petitioner submitted additional documentation including letters from industry competitors regarding the minimal educational norm in the industry for parallel positions; the petitioner's prior internet job announcements for the proffered position and the names and educational degrees of the

three employees currently filling the same position; the petitioner's posted job announcement for the proffered position; an additional description of the proffered position and the workflow; the company's organizational chart; the petitioner's 2003 federal income tax return; the petitioner's quarterly wage reports to the State of California for the fourth quarter of 2003 and the first three quarters of 2004; the petitioner's lease and floor plan; as well as photographs of the business premises.

In his decision the director found that the duties of the proffered position reflect those of a desktop publisher, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook* (*Handbook*). Drawing on information in the *Handbook*, the director concluded that a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into the occupation. The director stated that the evidence of record failed to establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, that the proffered position is so complex or unique that it cannot be performed without a specialty degree, or that the petitioner has a history of requiring a specialty degree for the position. Lastly, the director found that the record failed to establish that the duties of the proffered position are so specialized and complex that baccalaureate level knowledge in a specific specialty is required to perform them. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director erred in finding that the proffered position is a desktop publisher. The desktop publishing functions, counsel points out, comprise only one of the job duties and 20% of the beneficiary's time. The director's finding ignores the first and third duties described in the petitioner's initial letter to the service center, counsel contends, and conflicts with the service center's determination in the prior H-1B petition, filed by Magnus International Trade Service, that the beneficiary's position is a specialty occupation. Counsel emphasizes that the duties of a business operations specialist in a translation company, and the proffered position in particular, include evaluating project parameters, selecting the project team members, project preparation, and managing all client and vendor communications for the duration of the project. Counsel provides a more detailed listing of the duties of the proffered position, which reads as follows:

<u>Project Oversight</u>

- -- Complete management of multilingual translation projects via established policies and procedures.
- -- Determination of timeframe, value, procedures, staffing, and availability of technical resources by reviewing project parameters.
- -- Participation in the design and implementation of the company's annual project – management plan.
- -- Management of vendors, including selection, testing, scheduling, and coordination.
- -- Management of GLS vendor contracts and monthly invoices.
- -- Maintenance and improvement of project profitability.
- -- Preparation of project status reports for immediate supervisors.
- -- Performance of various customer service responsibilities.
- -- Additional research and analysis as needed.

Quality Assurance and Improvement

- Proactive initiative to increase translation quality while improving project turnarounds and costs.
- Enhancement of the company's vendor selection and management process.
- Improvement of the overall operations process and work flow.
- Quality assurance of deliverables through proofreading and/or others steps as necessary (translation style, reading level, glossary adherence, format, completeness, timeliness, correct electronic file format and naming convention, appropriate file transfer size, etc.

According to counsel, the beneficiary supervises 5-25 technical translators at any one time. The proffered position requires a specialty degree, counsel concludes, and therefore qualifies as a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*'s occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. *See Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO agrees with counsel that the director erred in finding the proffered position to be that of a desktop publisher, though some desktop publishing is involved in the job. Based on the duties of the position as described in the record and the nature of the petitioner's business, the AAO determines that the proffered position is a combination of three occupations described in the DOL *Handbook* – an operations manager, a translator, and a desktop publisher.

Operations managers (and general managers) are a sub-category of the *Handbook*'s broad occupation entitled "top executives." Their duties are described as follows in the *Handbook*, 2006-07 edition:

> *General and operations managers* plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the duties of general and operations managers may overlap the duties of chief executive officers.

The *Handbook*, *id.*, describes the educational background and experience of top executives, including general and operations managers, as follows:

> The formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts . . . .
>
> [M]any top executive positions are filled from within the organization by promoting experienced, lower level managers when an opening occurs. In industries such as retail trade or transportation, for instance, it is possible for individuals without a college degree to work their way up within the company and become managers. However, many companies prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations.

While the foregoing excerpt indicates that some operations manager positions may require baccalaureate or higher degrees in a specific specialty, it is not the normal minimum requirement for entry into such a position. The AAO concludes, therefore, that an operations manager does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

The occupation of translator is described in the *Handbook*, 2006-07 edition, as follows:

> *Translators* convert written materials from one language into another . . . . [T]hey also need good editing skills.
>
> Translators' assignments may vary in length, writing style, and subject matter . . . .
>
> Translating involves more than replacing a word with its equivalent in another language; sentences and ideas must be manipulated to flow with the same coherence as those in the source document so that the translation reads as though it originated in the target language . . . .

As for the educational requirements of translators (and interpreters), the *Handbook*, *id.*, states as follows:

> The educational backgrounds of interpreters and translators vary. Knowing a language in addition to a native language is essential . . .
>
> Beyond high school, there are many educational options. Although a bachelor's degree is often required, interpreters and translators note that it is acceptable to major in something other than a language. However, a specialized training in how to do the work is generally required. A number of formal programs in interpreting and translation are available at colleges nationwide and through nonuniversity training programs, conferences, and courses. Many people who work . . . in more technical areas . . . have master's degrees, while those working in the community . . . are more likely to complete job-specific training programs.

As indicated in the *Handbook*, numerous educational paths can prepare an individual for entry into the occupation. Though some translating positions may require a baccalaureate or higher degree in a specialty, many require less than baccalaureate level education and training. Thus, a translator does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

The director's description of desktop publishers and their educational qualifications is incorporated by reference into the instant decision. As determined by the director from information in the *Handbook*, desktop publishes do not require a baccalaureate or higher degree in a specific specialty and, therefore, do not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Since a baccalaureate or higher degree in a specific specialty is not the normal minimum educational requirement for entry into any of the three occupations comprising the proffered position, the AAO determines that the petitioner's position of business operations manager does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

However, based on the comprehensive descriptions in the record of the work the beneficiary performs in the proffered position; the highly technical nature of the translation projects undertaken by the petitioner; and the beneficiary's responsibility for choosing, overseeing, and managing the work of the translation teams as well as assuring a quality final product, the AAO determines that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*). The duties of the proffered position are so specialized and complex that baccalaureate level knowledge in a specialty directly related to the job is required to perform them.

To qualify to perform services in a specialty occupation an alien must meet one of the following criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(C):

> (*1*) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
>
> (*2*) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
>
> (*3*) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
>
> (*4*) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

As previously discussed, the beneficiary earned a bachelor of arts in foreign languages, focusing on English, from the National University of Honduras, on March 6, 1997, and a master of arts in translation and interpretation, Spanish-English, from the Monterey Institute of International Studies in Monterey, California, on May 13, 2000. The AAO determines that the beneficiary's master's degree is in a specialty that is directly related to the proffered position and that she is qualified to perform services in the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*).

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform services in that occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the AAO will sustain the appeal and approve the petition.

ORDER: The appeal is sustained. The petition is approved.