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U.S. Citizenship
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Services

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FILE: WAC 04 094 50204 Office: CALIFORNIA SERVICE CENTER Date: AUG 24 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:
[Redacted]

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 director 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 an exporter of education software that seeks to employ the beneficiary as a technical writer/translator. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the petitioner had failed to establish that the proposed position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 proposed position.

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

The petitioner’s submission set forth the duties of the proposed position as follows:

- Assist the [p]resident in working with Thai software distributors and school districts to facilitate the installation of educational computer software and to facilitate the training of teachers;
- Help draft and edit multi-year, multi-million dollar contract proposals in Thai, including diagrams and charts; assemble educational software packages for presentation to Thai government officials, school officials and World Bank officials;
- Assist the President in the negotiation of large, long term Thailand government contracts for the purchase of educational software and technical assistance;
- Help build and maintain positive relationships with the Thailand Ministry of Education, World Bank officials, Thai software distributors, and school districts;
- Provide linguistic and cultural adaptation of educational software for Thai clients;
- Provide localization/translation of technical terminology, software dialogs[,] and software;
- Provide localization/translation of educational software written material, including instructional manuals for computers, printers, [and] software programs;
- Assist in the selection (from American publishers), customization, and translation of educational software for school computerization projects in Thailand, financed by the World Bank and the Asian Development Bank;
- Provide Thai translation and interpretation for company President; and
- Maintain files of press reports about company activities in Thailand and the use of educational software in Thailand by reading Thai newspapers and magazines.

The RFE response stated that the beneficiary would “confer with software engineers in the U.S. and Thailand as necessary to insure the accuracy of the translation. She will coordinate translation efforts of software with the computer programmers to achieve an easily understandable product”

The director denied the petition, finding that the proposed position did not qualify for classification as a specialty occupation. As such, the director found that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established the proposed position as a specialty occupation. The director found that the proposed position did not qualify for classification as a technical writer:

Although the documents to be translated are highly technical and . . . their accurate translation is very important because of the highly technical nature of the petitioner’s business, the beneficiary does not even have to be familiar with engineering aspects of the business because she ‘will confer with software engineers in the U.S. and Thailand as necessary to insure the accuracy of the translation...’

As such, the director found that the duties of the proposed position were in fact those of a general translator:

[T]he true position being offered the beneficiary is that of a general translator, which is not considered a specialty occupation, vice a technical translator. And, even if the position was that of a technical translator, the beneficiary is not qualified in the field of computer engineering to provide the accurate translation of technical documents.

On appeal, the petitioner contends that the director erred in denying the petition, and that the proposed position is in fact a specialty occupation. In the appellate brief submitted on appeal, the petitioner states the following:

The employee must manage the entire business division for Southeast Asia, and Thailand in particular Her university degree was only the beginning. Working as a flight attendant for years in all classes improved her skills. She can fly to Asia and back on a moment[']s notice. Her marriage to a Thai foreign services officer, stationed in England, Greece, and Dubai polished her skills in English, and familiarized her with government procedures and access to ranking officials

The job is complex, unique, and nearly impossible to fill. A simple general translator can not penetrate the thicket of the Thai education ministry, determine what software they want, get it translated correctly to suit the tastes of the ministry officials, and bring the project to market on time. And then deal with the Thai finance ministry to get paid [sic].

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The *Handbook* sets forth the following information regarding the duties of technical writers:

Technical writers put technical information into easily understandable language. They prepare operating and maintenance manuals, catalogs, parts lists, assembly instructions, sales promotion materials, and project proposals. Many technical writers work with engineers on technical subject matters to prepare written interpretations of engineering and design specifications and other information for a general readership. They plan and edit technical materials and oversee the preparation of illustrations, photographs, diagrams, and charts.

The *Handbook* sets forth the following information regarding the duties of translators:

Translators convert written materials from one language into another. They must have excellent writing and analytical ability. And because the documents they translate must be as flawless as possible, they also need good editing skills.

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. Translators also must bear in mind any cultural references that may need to be explained to the intended audience, such as colloquialisms, slang, and other expressions that do not translate literally. Some subjects may be more difficult than others to translate because words or passages may have multiple meanings that make several translations possible. Not surprisingly, translated work often goes through multiple revisions before final text is submitted.

The *Handbook* divides its discussion of the duties of translators into several categories. The section regarding localization translators states the following:

Localization translators constitute a relatively recent and rapidly expanding specialty. Localization involves the complete adaptation of a product for use in a different language and culture. At its earlier stages, this work dealt primarily with software localization, but the specialty has expanded to include the adaptation of Internet sites and products in manufacturing and other business sectors.

Translators working in localization need a solid grasp of the languages to be translated, a thorough understanding of technical concepts and vocabulary, and a high degree of knowledge about the intended target audience or users of the product. The goal of these specialists is for the product to appear as if it were originally manufactured in the country where it will be sold and supported. Because software often is involved, it is not uncommon for people who work in this area of translation to have a strong background in computer science or computer-related work experience.

The duties of the proposed position as set forth in the petition more closely resemble those of a localization translator than those of a technical writer. As noted above, the primary role of a technical writer is to put technical language into easily understandable language. A reading of the *Handbook's* entry for this position does not lead to a conclusion that the authors contemplated translation from one language to another as one of the essential functions of the position. As such, the AAO will consider the proposed position to be that of a localization translator and will adjudicate this appeal accordingly.

In that the duties of the proposed position are most closely aligned to those of a localization translator, the AAO next turns to the *Handbook's* discussion of the educational qualifications required for entry into the field:

Beyond high school, there are many educational options. Although a bachelor's degree is almost always required, interpreters and translators note that it is acceptable to major in something other than a language. However, 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 as conference interpreters or in more technical areas—such as localization, engineering, or finance—have master's degrees, while those working in the community as court or medical interpreters or translators are more likely to complete job-specific training programs.

Accordingly, the proposed position cannot be considered a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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.

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the employer statements and job postings submitted by the petitioner in response to the director's RFE. However, the petitioner has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. In order to meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

None of the postings appear to be from organizations similar to the petitioner, an exporter of education software with five employees, nor did the petitioner attempt to demonstrate any of the positions' similarity to the proposed position. For example, one posting is from the United States Department of Agriculture, while another is from the United States Air Force. These organizations cannot be reasonably considered to be similar in size and scope to the petitioner. Nor can Wal-Mart, Inc., Google, Inc., Apple Computers, Micron, or the Computer Science Corporation. The position at LeapFrog cannot be considered parallel to the proposed position, as the duties differ substantially. The position at Translations.com is for an associate producer, and the position at Corporate Translations, Inc. involves work in the medical and pharmaceutical fields. Kidde-Fenwal, Inc. produces special hazard fire protection systems and cannot be considered an organization similar to the petitioner. The Hunter Fan Company, as indicated by its name, operates in the ceiling fan and home comfort industry. McKesson BioServices operates in the field of biomedicine. Advanced Technology Systems has over 900 employees and builds e-business systems for its clients. The postings from LaserFiche Document Imaging and Management and Manpower Professional do not contain enough information regarding the companies for the AAO to make a determination as to whether these companies may be considered similar in size and scope to the petitioner.

The statements from local businesses do not meet the petitioner's burden under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), either. The writer of the letter from the World Bank specifically states that his letter represents not the opinion of the World Bank but rather his own. Moreover, the writer does not state that a bachelor's degree is required for the position; he simply states that a candidate must be "educated."

The letters from LaserFiche Document Imaging and Management and Interactive Solutions, Inc. do not state that a degree is required for the position. They simply discuss how difficult it is to find translators.

Only the letter from Anderson Analytical Services states that a degree is necessary to perform the duties of this position. However, the author does not state that its company only hires individuals with degrees in a specialty, or that it has employed a translator. The letter implies that the company hires technical translators as needed to translate materials. As his personal knowledge of such workers' degrees is not in evidence, this letter will not be given much evidentiary weight.

Thus, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO also concludes that the record does not establish the proposed position as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the position is so complex or unique that it can only be performed by an individual with a degree. It finds no evidence that would support such a finding, as the position described in the petition is very similar to the localization translator position discussed in the *Handbook*.

Accordingly, the petitioner cannot establish its proposed position as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires the petitioner to demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

The submitted evidence fails to establish the third criterion. Any contention that the proposed position qualifies for classification as a specialty occupation under this criterion fails. It appears that the beneficiary would be the first individual to ever hold this position, so the petitioner cannot demonstrate any pattern or past trends in its hiring. The petitioner cannot demonstrate that it “normally requires” a degree.

Thus, the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) has not been satisfied.

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position’s 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 the specialty occupation. A review of the duties of the proposed position does not lead to a conclusion that they would require the beneficiary to possess a higher degree of knowledge and skill than that normally expected of localization translators in other, similar organizations.

Thus, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the director was correct to deny the petition.

The AAO acknowledges the petitioner’s submission of another H-1B approval notice for the proposed position, although it appears that this individual never entered the United States. However, the fact that the service center previously approved an H-1B petition for this petitioner does not compel the AAO to sustain this appeal. Each nonimmigrant proceeding 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 proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proposed position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have constituted gross error. CIS is not required to approve 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. 1988). Neither CIS nor any other 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). Moreover, the AAO is never bound by a decision of a service center or district director. *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).

The petitioner’s citation of non-precedent AAO decisions regarding positions other than the position proposed in this petition is not persuasive. Counsel has not established that the facts of the cited decisions are substantially the same as the facts in the instant case. Counsel’s references to non-precedent AAO decisions have no persuasive impact. While 8 C.F.R. § 103.3(c) provides that CIS precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Furthermore, 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 proceeding, *see* 8 C.F.R. § 103.2(b)(16)(ii), and the record presently before the AAO does not establish the proposed position as a specialty occupation.

The petitioner makes reference to the beneficiary's unique qualifications for the proposed position on appeal. For example, the petitioner notes that that beneficiary will be able to "deal with" Thailand's finance ministry, "penetrate the thicket" of Thailand's finance ministry, etc. However, the beneficiary's personal connections gained over time, whether as a result of her own experience in managing a furniture showroom, while married to a diplomat, or from other experiences, relate to the beneficiary's qualifications for the position and are not relevant to the analysis of whether the proposed position is in fact a specialty occupation.

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). As such, the AAO will 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.