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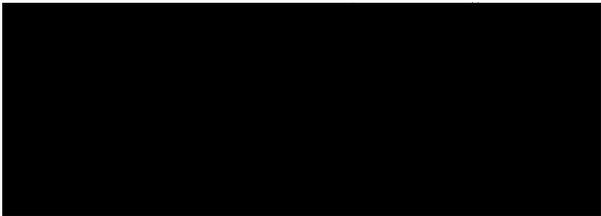
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FILE: WAC 03 105 51574 Office: CALIFORNIA SERVICE CENTER Date: MAY 17 2005

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:



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 director of 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 provides translation and technical writing services. It 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional and previously submitted evidence.

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.

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; and (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 a technical writer/translator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail reviewing various documents such as legal, financial, political, scientific and technical in the English and Chinese languages; translating technical and legal documents including contracts, proprietary agreements, policy and procedure manuals, operational guides, instructional materials, brochures, research findings, and client presentations; rewriting materials following standard rules of grammar, nuance, word meanings, sentence structure, and mechanics; translating complex concepts and technical terms; developing, writing, and editing documents and manuals; ensuring familiarity and accuracy of technical and legal terms and concepts by meeting with a client's technicians and counsel; and reading related publications and journals. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in English and have relevant work experience.

The director determined that the proffered position is not a specialty occupation. The director stated that a bachelor's degree is normally not required for entry into a translator position, and conceded that this occupation might be considered as specialized or of a complexity beyond what is normally encountered in the field if it involves translating highly technical documents and requires specific knowledge. Since the director found the evidence did not establish that the beneficiary has baccalaureate-level study in a specialty such as medicine, pharmacology, law, engineering, or computer technology, he concluded that the proposed position is not of a complexity beyond what is normally encountered in the occupation.

On appeal, counsel states that the proposed position is a specialty occupation, and that the director erroneously ignored the evidence. Counsel states that the proposed position has complex duties involving technical writing, grammar, nuance, and translating legal and business documents. Counsel asserts that the AAO has already determined that a technical writer/translator is a specialty occupation. According to counsel, the beneficiary possesses a bachelor's degree in English, and after acquiring this degree gained knowledge in specialized fields based on her work experience. Counsel points to the submitted job postings to show that a bachelor's degree in a related field (English) or language is common among the petitioner's competitors. Counsel states that the petitioner normally requires a bachelor's degree in English, and that its prior employee, who occupied a technical writer/translator position, held a master's degree in English and literature from a foreign university. Counsel asserts that the proposed position is not that of a general translator; that the beneficiary need not possess a bachelor's degree in a specialized field such as medicine, law, or engineering in order to translate documents; and that the submitted postings confirm that a degree in English is sufficient for a translator. Counsel states that the director did not afford the petitioner an opportunity to respond to his arbitrary requirement that the beneficiary possess a bachelor's degree in a specific field.

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.

Counsel asserts that the AAO has already determined that a technical writer/translator is a specialty occupation since the AAO has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted in the prior cases. In the absence of all of the corroborating evidence contained in those proceedings, counsel's references to prior AAO cases is not sufficient to determine whether the instant petition is similar to the approved H-1B petitions. 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).

The AAO next considers 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. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a 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 *Handbook* for its information about the duties and educational requirements of particular occupations.

The Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) discloses that translators perform the proposed position's duties. The *Handbook* states:

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.

Translators' assignments may vary in length, writing style, and subject matter. When they first receive text to convert into another language, translators usually read it in its entirety to get an idea of the subject. Next, they identify and look up any unfamiliar words. Translators also might do additional reading on the subject matter if they are unclear about anything in the text. However, they also consult with the text's originator or issuing agency to clarify unclear or unfamiliar ideas, words, or acronyms.

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 services of interpreters and translators are needed in a number of subject areas. While these workers may not completely specialize in a particular field or industry, many do focus on one area of expertise. . . .

...

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.

Providing language services to healthcare patients with limited English proficiency is the realm of *medical interpreters and translators*. . . . Translators working in this specialty primarily convert patient materials and informational brochures, issued by hospitals and medical facilities, into the desired language. Medical interpreters need a strong grasp of medical and colloquial terminology in both languages, along with cultural sensitivity regarding how the patient receives the information. They must remain detached but aware of the patient's feelings and pain.

The *Handbook* conveys the following educational requirements of translators:

The educational backgrounds of interpreters and translators vary. Knowing a language in addition to a native language is a given. . . .

...

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.

The *Handbook* states that although a bachelor's degree is almost always required, “translators note that it is acceptable to major in something other than a language.” Counsel states that the director did not afford the petitioner an opportunity to respond to the arbitrary requirement that the beneficiary possess a bachelor's degree in a specific field. As discussed earlier in this decision, 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. Because the *Handbook* indicates that a baccalaureate degree in a specific specialty is not required for a translator, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

For various reasons, the submitted job postings are insufficient to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - that a specific degree requirement is common to the industry in parallel positions among similar organizations. Walt Disney World Resort is in the entertainment industry; the Law Offices of Richard E. Bartholomew is a law practice; and Conduit Language Specialists seeks candidates for a position in the public sector. Consequently, these companies are dissimilar to the petitioner, a small company that provides translation and technical writing services. Because the Vanguard Medical Concepts, Inc., fandpgeorgia.com, Volt Services Group, TAC Worldwide Companies, Adecco Technical, and ATA Chronicle postings do not describe the employers, the AAO cannot determine whether they are similar to the petitioner. The Language Advantage and lactranslations.com postings discuss translator positions in the United Kingdom; they are not relevant in establishing a U.S. company's educational requirement. Consequently, the submitted evidence fails to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

No evidence shows that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the beneficiary's duties are performed by a translator, which is an occupation that does not require a bachelor's degree in a specific specialty.

Counsel states that the petitioner satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) because it normally requires a degree or its equivalent for the position, and that it had previously employed a person holding a master's degree in English and literature from a foreign university as translator.

Counsel's statement is not persuasive. The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or 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 the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. As already discussed in this decision, the *Handbook* reveals that the proposed position corresponds to a translator, which is an occupation that does not require a bachelor's degree in a specific specialty.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner 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.

The record contains documents that reveal that the petitioner provides general translation services. The documents are entitled: "Taiwan Taipei Local Court Payment Order," "New England Financial," "Memorandum Regarding Uniform/Textile Design & Marketing in China," "Joint Venture Agreement," "Portal Solutions," "Assignment of Monies Due Under Factoring Agreement and Subordination Agreement," "Everwin," "Factoring Agreement," "Asset Leveraged Life Strategy," "2003 Business Tax Update," and "Investigation Report on Pollution of Underground Water by Chromium Waste Water." Although technical, scientific, legal, and business terms appear in the documents, the terminology is not so specialized and complex as to require knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific field that relates to the particular document. For example, a bachelor's or master's degree in chemistry or a related field is not required in order to properly translate the document entitled "Investigation Report on Pollution of Underground Water by Chromium Waste Water." Consequently, the AAO finds that a baccalaurate degree in any field and proficiency in the English and Chinese languages would be sufficient to perform the duties of the proposed position.

The *Handbook* discusses the occupation of localization translators, which constitutes a relatively recent and rapidly expanding specialty. The *Handbook* conveys:

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

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.

Given that the beneficiary will translate a wide variety of documents covering many different fields of study, and the proposed position does not require certification, it differs from a localization translator as that occupation is described in the *Handbook*.

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.