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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



PUBLIC COPY

JUL 11 2001

File: SRC-98-248-51971 Office: Texas Service Center

Date:

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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition and subsequent motion to reopen were denied by the director. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a language school and a translation and interpreting business with 20 employees and a gross annual income of \$400,000. It seeks to employ the beneficiary as a manager of translation and interpreting services for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director denied the petition because the petitioner had submitted conflicting information indicating that a degree was not required and that a degree was required. The director also found that the record contained no evidence that the degree requirement was industry wide. On appeal, the petitioner's director submits various letters and an e-mail response to demonstrate that a bachelor's degree is required for the proffered position. She also submits an advertisement for an assistant/associate professor of Chinese/English translation that requires an advanced degree and professional translation experience, and web page printouts for three companies offering the services of professional translators and interpreters.

The petitioner's
Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

As an Instructor of Translation and Interpretation courses, she:

- will attend the *inlingua* Training Course for Interpreters in *inlingua*...
- will elaborate the different levels curricula of the Translation and Interpretation courses.
- will develop an assessment procedure to evaluate the students' aptitudes and multilingual or bilingual skills in order to place them in the right level.
- will teach the Translating and Interpreting techniques.

As a Translator, she:

- will translate from English, French, and Portuguese into Spanish...and from Spanish into English.
- will proofread the translations done by other colleagues in order to have quality control over the final product to be delivered to our customers.

As a Simultaneous Interpreter, she:

- will be interpreting with the simultaneous or consecutive techniques from English, French, and Portuguese into Spanish, and from Spanish into English.

As a TT (Teacher Trainer), she:

- will attend the TT Course in *inlingua* Bern, Switzerland in order to become familiar with *inlingua*'s pedagogical philosophies, techniques, methods, etc.
- will attend all updating courses held in the U.S.A. for TT, where new techniques and developments are introduced.
- will prepare all didactic material for *inlingua* instructors.

As a Foreign Language Teacher, she:

- will teach Spanish to native Americans or English-speaking students, and English to Spanish-speaking students.
- will evaluate students' proficiency levels in terms of their writing, reading and speaking skills.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with the petitioner's argument that the position of manager of translation and interpreting services would normally require a bachelor's degree in interpretation or a related field. In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to combine the duties of a general manager or executive with those of an interpreter and an adult education teacher. The petitioner has not persuasively established that the beneficiary's proposed duties as an interpreter are of such a complexity, as distinguished from familiarity with the Spanish, English, French, and Portuguese languages or a less extensive education. It is noted that in a letter dated June 3, 1998, the petitioner's director indicates that a minimum of two years of experience in the teaching and translating/interpreting fields and experience in dealing with people from diverse cultural backgrounds could be substituted for a bachelor's degree in foreign languages.

A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 50-51 also finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a general manager or executive. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background.

A review of the Handbook at pages 168-169 also finds no requirement of a baccalaureate or higher degree in a specialized area for employment as an adult education teacher. For general adult education classes, an acceptable work portfolio is required. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as interpretation, for the offered position.

Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. The petitioner's director did provide six letters and an e-mail from companies involved in translation and interpretation services. All state that the usual requirement for positions such as the proffered one is a baccalaureate degree. Only two of them specify that the baccalaureate degree must be related to translations, interpreting, foreign languages, or linguistics. Four do not specify any particular field of study at all. One indicates that the degree may be related to "languages, translation, interpretation, marketing or management." As such, it appears that a wide variety of degrees are acceptable for the position industry wide rather than a degree in a specialized area such as interpretation. The letters, as well as the web sites and advertisement that indicate the interpreter/translator position is a "professional" one, are insufficient evidence of an industry standard. It is noted that none of the letters contain duty descriptions. As such, it has not been shown that the complexity of the beneficiary's proposed duties warrants comparison with, for example, the duties of the manager of translation and interpreting services in the U.S. Department of State (see letter dated January 20, 1999).

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Beyond the decision of the director, the record does not contain an evaluation of the beneficiary's credentials from a service which specializes in evaluating foreign educational credentials as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(3). As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.