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OFFICE OF ADMINISTRATIVE APPEALS
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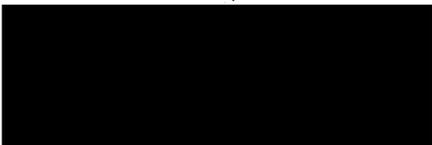
Date: AUG 03 2002

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:



Public Copy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a business providing translation services with fifteen employees and a gross annual income in excess of \$1.5 million. It seeks to extend the employment the beneficiary as a technical translator for a period of three years. The director determined that the petitioner had not established that the beneficiary is qualified to perform the services of the offered job.

On appeal, counsel submits a brief and additional documentation.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the beneficiary's educational background in economics and music did not appear to be related to the proposed duties. On appeal, counsel argues that the proposed duties of the proffered position, which include translating legal, financial, business, musical, and other highly technical documentation, are so complex as to require a baccalaureate degree. Counsel contends that every technical translator ever employed by the petitioner possessed at least a baccalaureate degree. Counsel asserts that the fact that the beneficiary is bilingual and has attained a bachelor's degree in economics more than qualify him to perform the duties of the offered job. Counsel argues that the beneficiary was previously granted H-1B status for the same technical translator position with the petitioner.

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

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.

The record establishes that the beneficiary earned a bachelor of arts degree in economics in 1993 from the University of Rochester and a master of arts in 1996 from New York University. The petitioner has not shown how that educational attainment qualifies the beneficiary for a position as a technical translator.

Counsel's assertion that the fact that the beneficiary is bilingual and has attained a bachelor's degree in economics more than qualify him to perform the duties of the offered job is not persuasive. While the beneficiary may very well be fluent in both Danish and English, he does not possess a formal degree in either language. The beneficiary's familiarity with Danish appears to derive from the fact that he is a native born speaker, and his familiarity with English appears to derive from his education in the United States.

Additionally, the record contains no evidence that the beneficiary would translate only highly technical documentation relating exclusively to subjects within economics or music, the disciplines in which he holds degrees. Rather, in a letter that accompanied the most recent I-129 petition, the petitioner's president described the duties of the beneficiary in the offered position as follows:

He has translated the operating and maintenance manuals for the Caterpillar Corporation. He has also worked on translating computer software documentation and licensing

agreements, warranties, labels, instructions for use, advertising and other documents for U.S. companies selling their products in Denmark. He has worked on the following types of products: medical and dental devises [sic], pharmaceutical products, home appliances, electronics, toys, gardening tools, travel related services (cruise lines), food, cosmetics and clothing. His expertise was used in translating documents for record companies and catalogs for art museums and galleries. He has also translated financial and legal documents for U.S. companies trading with Danish companies.

Furthermore, in a subsequent letter dated October 11, 2000, the petitioner's president stated the following:

We provide the highest quality translations to major United States corporations who are doing business in Scandinavia and also to Scandinavian corporations who wish to do business with the United States. The great majority of work done at [the petitioner] is highly technical. I am employed on a full-time basis by major United States corporations to provide operating and maintenance manuals, documentation for computer hardware and software, brochures and data sheets for medical equipment, legal pleadings, and corporate financial documentation. We are also famous for specializing in documents of a historical nature such as genealogical research, old handwritten texts, and other documents of a historical nature.

Counsel argues that the petitioner has only hired technical translators who were bilingual and possessed a bachelor's degree, as well as having passed a separate proficiency test to prove translating competency. Although the record contains a list of the degrees held by twelve current and thirteen past employees of the petitioner including the beneficiary, a review of this list reveals that the majority of degrees are held in subjects directly related to the use and translation of languages such as: comparative literature; linguistics; languages for specialized purposes; Romance languages and literature; classical philology; Greek philology; translation and interpretation; English; French; foreign languages; and Germanic and Scandinavian languages. As noted above, the petitioner's president has specified that beneficiary will translate a broad range of documents encompassing many non-technical subject areas that can only be considered remotely connected to either the bachelor's degree he possesses in economics or the master's degree in music that he holds. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in the proffered position based upon education alone.

For the purpose of determining equivalency to a baccalaureate degree in a field related to the job offered in this case, three years of specialized training and/or work experience must be demonstrated for each year of college-level training that the alien lacks. Here, the beneficiary needs twelve years of relevant work experience in the occupation to qualify.

The beneficiary does have some qualifying experience listed in the record. The record reflects that he previously worked for the petitioner as a technical translator for three years. The record does not contain any evidence that the beneficiary possesses any other relevant work experience. It is determined that at the time the petition was filed, he had attained less than twelve years of qualifying experience in the field of technical writing and translating. Therefore, it must be concluded that the beneficiary does not have sufficient work experience to overcome the fact that he does not possess a degree related to the offered job. See: 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

The record contains no evidence that the beneficiary has received any additional postsecondary training in a field relating to the position of technical translator. The record shows that the beneficiary does not possess sufficient work experience to overcome his lack of a degree related to the proposed duties of the proffered position. No evidence has been provided to establish that any of the beneficiary's other employment experience was experience in a specialty occupation or that it is sufficient to overcome the beneficiary's lack of a degree in a specialized and related field of study.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes him to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in the specialty occupation.

With respect to counsel's objection to denial of this petition in view of the approval of a prior petition submitted on the beneficiary's behalf for the same position in the past, the Associate Commissioner, through the Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. Louisiana Philharmonic Orchestra v. INS, 2000 WL 282785 (E.D.La. 2000), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S. Ct.51 (U.S. 2001).

Beyond the decision of the director, the record contains insufficient evidence to demonstrate that the position of technical translator is a specialty occupation requiring a minimum of a

bachelors degree in a specific field of study. The duties of a technical translator appears to combine the duties of a writer with those of a translator. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, finds no requirement of a baccalaureate or higher degree in a specialized area for employment as either a writer or a translator. 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.