



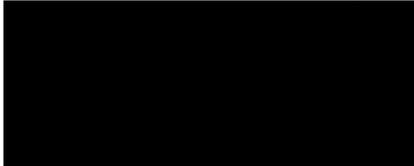
DA

U.S. Department of Justice

Immigration and Naturalization Service

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



File: LIN-01-208-54120

Office: Nebraska Service Center

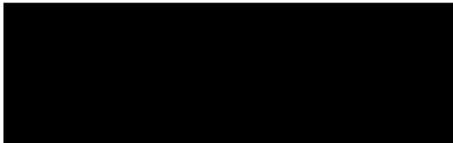
Date: OCT 07 2002

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 markets health and nutrition products. It has 275 employees and a gross annual income of \$191 million. It seeks to employ the beneficiary as a Japanese language translator for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel 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 not submitted any evidence to demonstrate that the proffered position qualifies as a specialty occupation. The director further found that the proposed duties indicate that the only requirement of the position is to be fluent in Japanese and English. On appeal, counsel cites published and unpublished Service decisions to support her argument that the proffered position is a specialty occupation. Counsel also states, in part, that a review of the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) also finds that the proffered position is a specialty occupation. Counsel further states that the proposed duties are so complex that a baccalaureate degree is required.

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:

She will translate technical documents including marketing and product communication from English to

Japanese and Japanese to English for written publications including marketing, feature and hard news items. The main responsibilities associated with this position are translation of marketing documents including flyers, product labels, letters, press releases, product profiles, and web projects from English to Japanese. The translation of government documents and communications from the Japan office and Japanese distributors is also required. This position also offers language support to Japan NFR department by creating training materials and providing language training to agents. The Translator will assist in the creation of product flyers and brochures as well as in corporate communication including announcements and press releases. She will assist in creative brainstorming meetings to develop marketing techniques that relate to the Japanese market. This position requires proofreading skills as needed for marketing pieces created in Japanese, including product labels and packaging, flyers, and corporate communication. The Translator is responsible for periodic communications including: Weekly Hold Message - recorded information message for Japanese telephone customers waiting to speak to an order or customer service agent; Email Club - monthly email format letter containing news, events, and other periodic announcements; and Japan NFR Website - update the contents such as new product announcement seasonal promotion and event news periodically. Language support for the Japan Not-For-Resale department must also be provided. This responsibility includes the creation of training material for non-native, Japanese-speaking telephone and fax response agents, the evaluation of agents' verbal and writing skills in Japanese, and training on appropriate phone etiquette.

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 counsel's argument that the proffered position would normally require a bachelor's degree in English or a related field. The proffered position appears to combine the duties of a writer with those of a translator. A review of the DOL's Handbook, 2002-2003 edition, at page 147, finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a writer. Most employers *prefer* a degree in English, communications, or journalism while others look for a broad liberal arts background. (Emphasis added.) (It is noted that the beneficiary does not hold a baccalaureate degree in English, communications, or journalism; rather, she holds a baccalaureate degree in British and American studies, which was determined to be equivalent to a baccalaureate degree in American studies offered by an accredited university in the United States.) Counsel argues that the "duties of the Enrich Japanese Language translator are more complex and require writing, editing and technical writing." A review of the beneficiary's writing samples, however, does not persuasively demonstrate that her duties are so complex as to require a baccalaureate degree in a specialized field of study, as distinguished from a baccalaureate degree in any field or familiarity with the subject matter. Nor has the petitioner established that the beneficiary's duties as a translator are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with the Japanese and English languages or a less extensive education, is necessary for the successful completion of its duties. 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 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. 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.

Counsel cites various unpublished AAU decisions, which have no precedential effect in this proceeding. See 8 C.F.R. 103.3(c).

Counsel further states that the Board of Immigration Appeals held that the specific position of technical writer requires at minimum a bachelor's degree for entry into such a profession. Unlike the beneficiary in the present case, however, the beneficiary in Matter of Desai, 17 I&N Dec. 569 (BIA 1980) possessed the equivalent of a bachelor of science degree in mechanical engineering in addition to a degree in journalism. The findings of a professional technical writing organization, the Society for Technical Communication, located in Washington D.C. were noted as follows:

The most usual educational preparation for a career in technical writing is a bachelor's degree from an accredited college or university, with emphasis on both writing and science."

It is noted that the findings of the professional technical writing organization are corroborated by the statements of three editors of various professional technical magazines and journals, as well as by the director of the Technical Communications program at the University of Minnesota. Thus, even if the Service were to conclude that the precedent decision was analogous to the present case, it cannot not be concluded that the proffered position is a specialty occupation as the petitioner does not require a bachelor's degree with an emphasis on both writing and science. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.