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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
425 I Street, N.W.
Washington, DC 20536



File: SRC 03 171 54187 Office: TEXAS SERVICE CENTER

Date: AUG 25 2003

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)

ON 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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is the State of New Mexico's public secondary school for the deaf for grades three through twelve. It has 185 employees. As a public entity, it has no gross annual income. It seeks to temporarily employ the beneficiary as an Interpreter/Coordinator for a period of three years. The director determined that the proffered position of interpreter was not a specialty occupation.

On appeal, counsel asserts that the proffered position is not a standard interpreter position and the proffered position encompasses multiple duties. Counsel submits additional documentation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the Nebraska Service Center on June 3, 2003, the petitioner described the duties of the proffered position as "Interpreter/Coordinator" and also noted that the beneficiary would be the sign language interpreter for the Superintendent of the New Mexico School for the Deaf.

On June 10, 2003, the director requested further information with regard to the proffered position. In particular, the director requested a more detailed job description of the proffered position to establish how the position established any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

In response, the petitioner submitted a job posting that described the proffered position as "Interpreter/Coordinator of Interpreters/Special Assistant to the Superintendent," and outlined the following job duties:

The Assistant interprets for the Superintendent as needed on a daily basis. He/she schedules and supervises American Sign Language and Spanish interpreters used in both academic and general school settings. He/she manages the interpreting budget, handles billing, and provides supervision for all NMSD [New Mexico School for the Deaf] contracted interpreters. He/she also assists the Superintendent with assigned projects. He/she must have excellent interpersonal relationship skills.

Specific responsibilities also included:

Functions as the NMSD bill analyst for the legislative process. Duties include the tracking of legislation, analysis of legislation affecting NMSD, and coordination of meetings between the Superintendent and legislators. Advises and provides workshops, in conjunction with the ERCD [Educational Resource Center on Deafness] for public school districts, state agencies, and organizations on the use and placement of interpreters, the role of Sign Languages, and effective communication strategies for individuals.

Among qualifications required were listed: a bachelor's degree in sign language interpretation or related field and at least five (5) years interpreting experience in a variety of settings; Registry of Interpreters for the Deaf (RID) Certificate of Interpretation (CI) and Certificate of Transliteration (CT) or [National Association of the Deaf] NAD QA-5 Certification; RID and/or National Association of the Deaf (NAD) Interpreter Certification; and ability to supervise and provide leadership for interpreters with a wide range of skills.

In addition, the petitioner submitted five job announcements for interpreters. Four job vacancies were for positions within educational institutions. The fifth vacancy announcement was for an interpreter with the New York Foundling Hospital, a social services agency.

On June 25, 2003, the director denied the petition. The director stated that the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) on page 596 indicated that the most significant source of training for interpreters and translators was "long-term on-the-job training." Based on this information, the director stated that a baccalaureate degree in a specific specialty was not a normal requirement for entry into the interpreter position. The director did not find the five job vacancies provided by the petitioner to be persuasive since the educational requirements for these jobs ranged from baccalaureate degrees to high school diplomas.

On appeal, counsel states that the proffered position meets the second and fourth criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A) based on the unique, specialized and complex nature of the duties. Counsel distinguishes the proffered position from a standard interpreter position, in part, because the beneficiary reports directly to the superintendent of the school, who is deaf. Counsel states:

The [beneficiary] is required to attend meetings with the Superintendent, including meetings with the Governor's office, legislators, and other federal and state officials. The beneficiary would attend school board meetings and hearings involving the Superintendent and the Board of Regents, which has two deaf members. This requires an extremely high level of sign language interpreting on two levels: -First, groups of people tend to speak simultaneously and all the information needs to be effectively translated to the Superintendent; -Second, the language is often quite detailed and technical.

Counsel also states that she received a statement from [REDACTED] Assistant Professor in the Linguistics Department, University of New Mexico, who helped to write the interpreter/coordinator job description several years ago.

According to Professor [REDACTED] the person who fills the interpreter/coordinator position in essence needs to know as much as the people for whom he or she is interpreting. Counsel refers to a State of California statement with regard to court interpreters, and states that the concept of dealing with a specialized language in the courtroom is essentially the same quality required by the New Mexico School for the Deaf. Counsel further asserts that the position is a supervisory one. Counsel then describes the following eight responsibilities contained within the proffered position:

1. Interprets for Superintendent;
2. Schedules and supervises interpreters in academic and general school setting;
3. Manages budget, handles billing and provide[s] supervision for all contracts with interpreters;
4. Assists Superintendent with assigned projects;
5. Hires and supervises interpreters;
6. Legislative bill analyst (tracks and analyzes legislation affecting [New Mexico School for the Deaf]);
7. Coordinates meetings between superintendent and legislators;
8. Advises and provides workshops for public school districts; state agencies and organizations on the use and placement of interpreters.

Counsel also submits an affidavit from [REDACTED] President, Board of Regents, New Mexico School for the Deaf. Mr. [REDACTED] affidavit outlines the basis for the petitioner's position that the proffered position requires a bachelor's degree in interpreting. Mr. [REDACTED] states that two members of the Board of Regents are deaf, in addition to the Superintendent. He then describes the position as the superintendent's liaison with the Governor's office, the legislators, the Board of Regents and other top-ranking state and federal government officials. As such, Mr. [REDACTED] states that the highest level of articulation and knowledge is necessary, since misunderstandings or miscommunication of the statements made or intent of the participants can have a serious and adverse impact on the school, its programs and funding. In addition, Mr. [REDACTED] states that the petitioner has been seeking to fill this position since June of 2002, and that every employee who has filled the interpreter/coordinator position since 1994 has had a baccalaureate degree. No documentary evidence is provided to substantiate this assertion with regard to previous interpreter/coordinator employees.

Finally counsel submits additional job advertisements. Included among these advertisements are: a position description for a program administrator for Los Alamos National Laboratory; Interpreter/Coordinator, North Idaho College; Interpreter Coordinator/Staff Interpreter, Dartmouth College; and Sign Language Interpreter, Monmouth University. Counsel states that

two job announcements from the Albuquerque School District combine the duties contained in the proffered position. These two announcements are for positions entitled "Liaison: Governmental" and "Specialist: Sensory Impairment." Finally counsel states that the beneficiary's current Association of Visual Language Interpreters of Canada Association's (AVLIC) Certificate of Interpretation is the equivalent of the United States NAD Level-5 Certification.

With regard to the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, the Bureau of Citizenship and Immigration Services (Bureau) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

As the director correctly noted, the *Handbook* contains minimal information on sign language interpreters. The generic description of interpreters and translators includes sign language in types of interpretation but provides no additional relevant information on the proffered position beyond the main source of training for interpreters being long-term on-the-job training. However, it should be noted that the proffered position, as outlined by counsel and described in the job posting, does contain many more duties distinct from strictly interpreting for students or other persons. Counsel lists duties with regard to the coordination of the interpretation program at the New Mexico School for the Deaf, the organization of community outreach programs, as well as specific duties such as the tracking of legislation relevant to the petitioner. Nevertheless, based on the classifications identified by both the director and the petitioner, the *Handbook* does not establish that a baccalaureate degree is required for entry into the proffered position.

With regard to the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), namely that the degree requirement is common to the industry, the petitioner provided several relevant job announcements for positions within educational institutions. While these job vacancies do establish that baccalaureate degrees are often required by employers of sign language interpreters, the announcements do not identify a specific specialty. For example, the interpreter trainer position for the Arizona State Schools for the Deaf and the Blind and the specialist: sensory impairment position with the Albuquerque Public Schools state that a bachelor's degree is required, along with certifications or the ability to be certified; however, no specific baccalaureate degree is identified. As stated previously, the statute establishes that the petitioner must show that the proffered position requires a baccalaureate degree or higher, or

the equivalent, in a specific specialty. (Emphasis added.)¹ To interpret the criteria in 8 C.F.R. § 214.2(h) (4)(iii) (A) as merely requiring a bachelor's degree in any area is an incorrect interpretation.

Other vacancy announcements identified several types of degrees that would be appropriate for entry into the position. For example, the position of staff interpreter at the University of New Mexico requires a bachelor's degree in a related administrative, business, liberal arts, or social sciences discipline with one to three years of experience directly related to the duties and responsibilities specified. To the extent that the evidence submitted by the petitioner with regard to parallel positions does not establish that a bachelor's degree in interpreting is common among similar organizations within the sign language industry, the petitioner did not establish this criterion.

With regard to whether the employer normally requires a degree or its equivalent for the proffered position, although the president of the Board of Regents for the New Mexico School for the Deaf states that all previous interpreter/coordinators have had baccalaureate degrees, no documentary evidence, such as diplomas of previous interpreter/coordinator hires, was submitted to establish this assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, the record is not clear as to whether these individuals had baccalaureate degrees in interpreting, or in other areas of studies. Therefore the petitioner did not establish this criterion.

Nevertheless, upon review of the record in the context of the alternative part of the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), and of the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner has submitted sufficient evidence to establish that the nature of the duties of the proffered position is both unique and specialized. The job description contains several distinct areas: the beneficiary's responsibilities with regard to interpreting for and assisting the Superintendent of the New Mexico School for the Deaf and the Board of Regents; the beneficiary's responsibilities with regard to the interpretation program at the same educational institution; the community outreach programming; and the beneficiary's proposed duties in tracking state legislation of relevance to the school.

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 *Defensor v. Meissner* 201 F.3d 388 (5th Cir. 2000).

These duties appear to be distinct and unique to the position. An Internet search reveals that the petitioner is significantly involved in advising the New Mexico legislature and governor on ongoing issues involving the deaf community in New Mexico.² The President of the Board of Regents also provided persuasive testimony as to the need to have an individual with a baccalaureate degree providing interpretation for both the Superintendent and two members of the five-member Board of Regents, a public body appointed by the Government of New Mexico that administers the school.³ Both the petitioner, and by extension, its superintendent, its board of regents, and the beneficiary, occupy a unique role both within the deaf community and the larger New Mexico community. The interpretation job duties, which provide for communication in various sign formats between both the superintendent and the board of regents, and the groups with whom they meet, appear to require more specialized interpreting skills and a more in-depth knowledge base of the topics being discussed. In addition, the supervisory duties outlined by counsel add another level of specialization to the proffered position that would distinguish it from the basic job duties of sign language interpreters. Within this context, it does not appear excessive that the petitioner would seek an individual with a baccalaureate degree in interpreting for the proffered position.

As stated previously, the critical element in this analysis is not the 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 bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. Given the multiple layers of distinct job duties, and the unique nature of the position, the petitioner appears to have met both the statutory requirements as outlined in the Act and the regulatory criterion outlined in 8 C.F.R. § 214.2 (h) (4) (iii) (A) (4).

² The petitioner, along with the New Mexico Commission for Deaf and Hard of Hearing Persons, jointly issued a report examining the need for licensure for sign language interpreters in November 2002. In 2001, the New Mexico State Legislature expressly directed the New Mexico School for the Deaf, along with the New Mexico Commission for Deaf and Hard of Hearing Persons, to conduct the two-year study partly in response to the need to raise the standards of interpreting services within the state. The study involved town hall meetings, and meetings between the two reporting bodies, among other activities. See *Signed Language Interpreter Licensing* at <http://www.nmcdhh.org/pdf/slil.pdf> (available as of August 18, 2003).

³ See description of governance of the New Mexico School of the Deaf at its website <http://www.nmsd.k12.nm.us/info.html> (updated August 15, 2003).

Beyond the decision of the director, the petitioner has not sufficiently established that the beneficiary is qualified to perform the duties of the proffered position. As stated earlier in this decision, the petitioner listed the qualifications required for the proffered position as: a bachelor's degree in sign language interpretation or a related field and at least five (5) years interpreting experience in a variety of settings; Registry of Interpreters for the Deaf (RID) Certificate of Interpretation (CI) and Certificate of Transliteration (CT) or [National Association of the Deaf] NAD QA-5 Certification; RID and/or National Association of the Deaf (NAD) Interpreter Certification; and ability to supervise and provide leadership for interpreters with a wide range of skills. The petitioner submitted a copy of the beneficiary's 1995 bachelor of science degree in interpreting from the University of New Mexico, and the beneficiary's resume that listed her work experience from 1996 to the submission of the instant petition.

However, the beneficiary does not appear to have any of the United States RID or NAD interpretation certifications required by the petitioner. On appeal, counsel asserts that the AVLIC Certificate of Interpretation is equivalent to the U.S.NAD Level-5 Certification; however, counsel submits no documentary evidence to establish this assertion. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). It should also be noted that no copy of the beneficiary's AVLIC certification document was submitted for the record.

In addition, although the petitioner stated in its job description that it desired a Sign Communication Proficiency Interview (SCPI) rating of advanced plus or higher, and the beneficiary's resume states that she possesses the higher SCPI rating of superior as of the year 2000, the record does not contain a copy of the beneficiary's SCPI rating document. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

As noted on the NAD website, the U.S. national interpretation certification process appears to be in a period of transition from NAD oversight to RID processing.⁴ In addition, it is acknowledged that the State of New Mexico does not require licensure for sign language interpreters. Nevertheless, because the petitioner requires the holder of this position to have specific education, experience, and certification credentials, the petitioner must establish that the beneficiary's Canadian certification is equivalent to the required U.S. certification.

⁴ See the discussion on the expiration of the NAD testing instrument for sign language interpreter certification at <http://www.nad.org/openhouse/programs/NIC/PR112502upgrades.html>. (Available as of August 22, 2003).

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 sustained that burden with regard to establishing that the proffered position is a specialty occupation. However, the issue of whether the beneficiary is qualified to perform the duties of the position based on the petitioner's qualification requirements remains unresolved. Accordingly the director's decision will be withdrawn and the petition remanded to the director for further consideration based on the foregoing discussion. The petitioner will be provided the opportunity to submit further evidence within a reasonable time to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The director's decision of June 25, 2003 is withdrawn. The petition is remanded to the director for further consideration in accordance with the foregoing and entry of a new decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.