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

IDENTIFYING ORIGINATING OFFICE
PROVIDE TO ORIGINAL OFFICE
FOR REVIEW AND COMMENT

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



File: EAC-02-012-52813 Office: VERMONT SERVICE CENTER Date:

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:



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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an international beer distributorship and consulting business with four employees and a gross annual income of \$194,802. It seeks to employ the beneficiary as a technical writer/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.

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 petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel asserts, in part, that the proposed duties, which include translating technical documents into Russian, are so complex that a baccalaureate degree in English is required. Counsel cites *Matter of Desai*, 17 I&N Dec. 569 (BIA 1980) in support of his assertion.

Counsel's statement on appeal is not persuasive. The Bureau 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 Bureau

considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- (i) Editing and translating from English to Russian and from Russian to English of brewing process and product specification manuals, operating policies and procedures with respect to quality assurance matters, technical specifications with respect to installation, operation and maintenance of the brewery machinery and equipment such as material set forth in Exhibits to the License Agreement between North Winds and ZAO Pivovarni Ivana Taranova. . . [;]
- (ii) Writing and translating operating manuals, information pamphlets and product labels as required by applicable regulations related to the importation and distribution of beer;
- (iii) Interview production and engineering personnel and review technical reports, manuals and other material to maintain familiarity with product technologies and production methods; [and]
- (iv) Translate financial and corporate documents and business correspondence from English to Russian and from Russian to English.

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 Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in English or a related field. A review of the Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, at page 147, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a technical writer. The *Handbook* states that:

Technical writing requires a degree in, or some knowledge about, a specialized field - engineering, business, or one of the sciences, for example. (Emphasis added.) In many cases, people with good writing skills can learn specialized knowledge on the job. Some transfer from jobs such as technicians, scientists, or engineers. Others begin as research assistants, or trainees in a technical information department, develop technical communication skills, and then assume writing duties.

Counsel's citation of *Matter of Desai, supra*, is noted. Unlike the beneficiary in the present case, however, the beneficiary in the cited case 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.

Instead, the petitioner requires a bachelor's degree in English and fluency in the Russian language.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as English, for the offered position. Third, the petitioner did not present any persuasive documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. It is noted that the job advertisements provided by the petitioner were not for parallel positions among organizations similar to the petitioner. For example, one of the advertisements is for a computer applications translator for Wal-Mart, and other advertisements are for senior translators in a space systems company. 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 advisory opinion from [REDACTED] an individual with executive employment experience in the brewery industry, is noted. Mr. [REDACTED] states, in part, that a college degree is required for positions such as the proffered position. Mr. [REDACTED] however, has not provided evidence in support of his assertion. Simply 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).

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.

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.