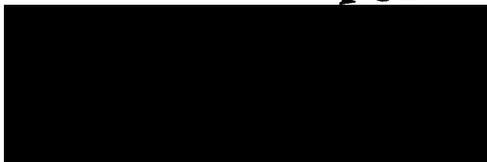


DD

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

PUBLIC COPY

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



DEC 03 2003

FILE: WAC 02 101 57034 OFFICE: CALIFORNIA SERVICE CENTER

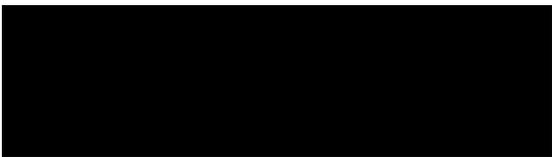
DATE:

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)

ON BEHALF OF PETITIONER:



identifying data deleted to
prevent identity and unwanted
invasion of personal privacy

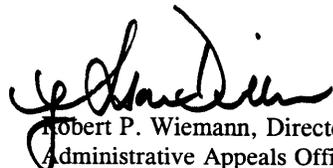
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a provider of a full range of translation and language services that currently employs two persons and anticipates a gross annual income of \$100,000-\$200,000. It seeks to employ the beneficiary as a technical and theological/Bible translator for a period of three years. The director denied the petition for failing to establish that the proffered position qualified as a specialty occupation.

On appeal, the petitioner submits a letter and additional evidence.

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 for the classification of qualified nonimmigrant 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 the term "specialty occupation" as an one 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 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.

On the Form I-129, the petitioner listed the proffered position as "Technical and Theological/Bible Translator" and described the proposed duties as follows:

Responsible for the translation, editing, and/or final review of technical, literary, biblical/theological

and other highly complex documentation in English and Spanish. Utilize knowledge and understanding of biblical terms, including knowledge of biblical New Testament Greek and Old Testament Hebrew. Provide simultaneous interpretation services and prepare/provide Spanish classes.

Among other documents submitted with the Form I-129 was a letter of support from the petitioner's president. This letter described the petitioner's business as follows:

[The petitioner] was established in 2001 as a full-range language service company. Our language services include translation and interpretation, children's and adult Spanish classes, and children's French classes. We provide our corporate clients with translation and preparation of product brochures, technical manuals, complex technical documentation, websites, and general correspondence to their customers in their own language, and vice versa. We can provide basic translation services as well as highly complex language translation and interpretation to support the technical, literary, and biblical (New Testament Greek and Old Testament Hebrew), and other areas. Our current language strengths are in English and Spanish, with the ability to provide translation services in Russian and French. We presently employ 2 professionals and expect a gross annual income of \$100,000-200,000 by next year.

The beneficiary would enter this business context with these duties as described in the president's letter:

We currently require the services of a Technical and Theological/Bible Translator. In this position, [the beneficiary] will be responsible for the translation, editing, and/or final review of technical, literary biblical/theological and other highly complex documentation in English and Spanish. She will utilize her knowledge of biblical New Testament Greek and Old Testament Hebrew. [The beneficiary] will study and become familiar with our clients' products and services in order to provide quality and accurate translations, which convey the details that the clients' documents are intended to communicate. She will provide simultaneous interpretation services between English and Spanish, and vice versa. [The beneficiary] will also prepare and provide Spanish classes for commercial and private clientele

The letter also asserted that because the position involved "translation of highly complex documentation," it required "at

least a bachelor's degree plus two years experience as a translator."

Along with documents pertaining to the beneficiary's educational credentials, the petitioner also submitted a printout from its Internet site, to provide further background on its business.

The director issued a request for additional evidence about job duties and the need for a person with a bachelor's degree or the equivalent in an occupational field. The request also sought specific types of evidence that were relevant to the regulatory criteria for an H1-B specialty occupation.

In response to the request for additional evidence, counsel provided a letter with numerous enclosures, including: (1) an excerpt from the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)*, on "137.267-018 Translator (Prof. & Kin)"; (2) DOL Internet page explaining the Specific Vocational Preparation (SVP) rating for occupations covered in the *DOT*; and (3) a California Employment Development Department "Labor Market Information" Internet section on translators and interpreters."

In his denial, the director stated that the evidence of record did not establish that the proffered position qualified as an H-1B specialty occupation under any of the regulatory criteria.

The petitioner represented itself on appeal, through its president, and submitted a number of documents:

1. A letter from the president;
2. Internet advertisements from nine translation services, submitted as evidence that a bachelor's degree is a standard industry requirement;
3. "[A] listing of 104 superior educational Centers in [the] USA (colleges, universities, institutes) that provide a Bachelor degree or higher, or certification in literary translations," submitted as evidence of the necessity of a bachelor's degree for the translating business;
4. Several Internet documents pertaining to translating, submitted as evidence that the industry recognizes that there are differences in the quality of translations, and that quality translations require translators who are "quality people"; and
5. Three examples of poor translations, submitted as evidence of the type of bad impression poor translations make.

The letter explains the evidentiary significance of its enclosed documents. It also asserts that the director did not understand that the petitioner is not seeking a free-lance translator, but, rather, a college graduate "with university studies in languages as well as a Theology specialty, needed to write to a college educated client base."

The letter also lists characteristics that the holder of the proffered position must have in order to assist the petitioner. These include, but are not limited to: a minimum of a four-year college degree in language studies; "an academic degree in or related to a field of specialization"; "a native-like efficiency in [the] target language; experience in editing and proofreading; ability "to do biblical translations, especially if using Greek and Old Testament Hebrew," which would come from a college degree in theology.

The letter also asserts that the petitioner's two employees have college degrees: the president has a bachelor of science degree in chemical engineering, and the other employee, the Lead Translator/Proofreader, has bachelor of arts degrees in French/Spanish and in Theology.

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.

Upon full review of the entire record, the AAO has determined that the petitioner has not established that the proffered position is a specialty occupation. As the following discussion will show, the evidence does not satisfy any of the qualifying criteria of 8 C.F.R. § 241.2(h)(4)(iii)(A).

It is worth emphasizing that "degree" as used in each of the four criteria at 8 C.F.R. § 241.2(h)(4)(iii)(A) means one in a "specific specialty," that is in a discipline associated with a body of highly specialized knowledge. See section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), above.

I. Baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the particular position.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (1).

As discussed below, the evidence does not satisfy this criterion's requirement that the proffered position be one that normally requires a bachelor's degree or equivalent in a specific specialty as a minimum for entry-level hire.

When determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a proffered position, the AAO looks to DOL's *Occupational Outlook Handbook (Handbook)* for comments on the occupations it addresses. Here the AAO consulted the 2002-2003 edition.

The *Handbook* indicates that a bachelor's degree, or equivalent, in a specific specialty is not a normal requirement for the interpreter and translator occupation. At page 596, the *Handbook* states, in part, "Most significant source of training: Long-term on-the-job training."

The aforementioned California Employment Development Department's material only notes one instance of an entry-level degree requirement, and that is for employment at the United Nations.

The *DOT* material is of limited value and is not persuasive. The AAO does not consider the *DOT* an authoritative source for determining educational and training requirements under Citizenship and Immigration Services (CIS) H-1B regulations. In particular, SVP ratings do not establish whether a bachelor's degree, or its equivalent, in a specific specialty is required. Rather, as the submitted document on the SVP indicates, the SVP rating is a generalized measure that does not specify whether the requisite training has to be acquired "in a school, work, military, instructional, or vocational environment."

Furthermore, no other evidence in the record indicates that the proffered position is one that normally requires either a bachelor's degree, or equivalent, in a specific specialty.

Accordingly, the petitioner has not met the specialty occupation criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

II. Degree requirement that is common to the industry in parallel positions among similar organizations, or, alternatively, a

particular position so complex or unique that it can be performed only by an individual with a degree.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (2).

A. Degree requirement common to the industry.

Factors often considered by CIS when determining the industry standard include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The above discussion about the *Handbook*, California Employment Development Department, and *DOT* material apply equally here and need not be repeated. None of this material indicates a degree requirement that is common to the petitioner's industry.

The Internet information from other translator services also fails to establish an industry degree-standard for a degree in a specific specialty. The material indicates that most of these translating firms require a college degree in whatever specific field the translator will be working. Therefore, to the extent that there is a requirement for a bachelor's or higher degree, it appears that the degree could be in an area which does not contain a body of highly specialized knowledge. Also, it appears that the translator services require degrees not for the theoretical and practical application of highly specialized knowledge, but rather for a level of understanding that would aid in intelligent translations.

B. Degree necessitated by the complexity or uniqueness of the position.

The record fails to establish that the particular duties of the proffered position are either so complex or so unique that only an individual with a bachelor's degree in a specific specialty could perform them.

The duties require primarily the ability to provide quality translations and interpretations from Spanish to English and vice/versa. The petitioner did not project either the extent to which translation of biblical work would be involved or the degree that such work would require translation of Greek and Hebrew. In any event, the totality of duties (including, but not limited to, translating, interpreting, proofreading, editing, and providing some Spanish instruction) do not appear so complex or unique that only a person with a bachelor's degree in a specific specialty could perform them.

For the reasons discussed above, the director was correct in not granting the petition under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

III. Degree or its equivalent as the employer's normal requirement for the position.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (3).

One of the petitioner's two employees has a bachelor's degree in chemical engineering, and the other has two bachelor degrees: French/Spanish and theology. This fact is not persuasive.

Technically, this is the first time that the proffered position has been offered, and so there is no established course of hiring for it. Furthermore, the record does not establish that the two present employees depend on their chemical engineering and theology degrees for other than a good understanding of the material that they are translating or interpreting. This would not amount to the H-1B requirement that the employer-specified degree be used in the theoretical and practical application of a body of highly specialized knowledge.

Accordingly, the record lacks a basis for a finding for the petitioner in regards to 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

IV. Specific duties of a nature so specialized and complex as to require knowledge usually associated with a baccalaureate or higher degree.-8 C.F.R. § 14.2 (h) (4) (iii) (A) (4).

The record does not depict duties that, alone or in combination, are so specialized and complex as to require the highly specialized knowledge usually associated with a bachelor's degree in any specific specialty.

Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussions above, the petitioner has failed to establish any one of the four specialty occupation criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.