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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



File: SRC 01 150.53862

Office: TEXAS SERVICE CENTER

Date:

JAN 24 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)

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, Texas Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is an industrial products and supplies export company in Atlanta, Georgia, with four employees and a gross annual income of \$2,400,000. It seeks to temporarily employ the beneficiary as a Translator/Interpreter and Liaison for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the Administrative Appeals Office (AAO) has accorded professional status to the position of translator which is related to a technical document editor. Counsel also affirms that the beneficiary is qualified to perform the duties of the proffered position.

Section 214(i)(1) of 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.

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 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.

The issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation.

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.

In the original petition received by the Service Center on March 21, 2001, the petitioner stated that the beneficiary would work as an Interpreter/Translator and Liaison. The petitioner expanded on the proposed job duties as follows:

As a translator/interpreter and liaison at OMNIMART, [the beneficiary] will specialize in issues pertaining to export orders from the United States to various locations in Mexico, Central America and South America. [The beneficiary] will be working directly under the President/owner assisting in the translation of OMNIMART's product catalogue to Spanish and updating the catalogue and translations on a periodic basis. The employee will be assigned to a project with a particularly large client of OMNIMART for the purpose of exporting high-tech computer equipment such as fiber optic cable, switches and routers for the client company in which she will be translating technical documents regarding the equipment. Only persons with bachelor's degrees with substantial computer coursework and the fluency in English and Spanish would be qualified for the position. Other duties will include assisting in web page design, maintenance and updates to ensure grammatical correctness and cultural sensitivity, translating bid requests from Latin American clients, ensuring completeness with respect to product specifications. As a Liaison she will monitor our exports, confer with clients and prospective clients to inquire as to their needs in terms of product specifications, quantity, quality and time limitations, follow up with clients to ensure that products were delivered timely, that quality specifications were met and, that orders were complete. Employee shall also be responsible for creating and maintaining a computer file structure and she will use appropriate computer programs for billing, communications and monitoring of exports. A bachelor's degree with coursework in computers and English/Spanish is essential as over 50% of the employee's job will be

translating technical documents regarding the specification of technical products including but not limited to fiber optic cables, switches used for computer Local Area Networks (LANs) and Wide Area Networks (WANs). She will use English and Spanish in this position.

In an undated request for further evidence, the director noted that the beneficiary's work experience was as a system analyst and that she had translation experience. The director then stated "we can see that the beneficiary's background would be desirable; however, she may be overqualified for this position." The director further noted that the proposed salary for the position was fifteen dollars an hour and asked what hourly wages would be for a systems engineer. Finally the director stated that the proffered position does not appear to require a degree. The director requested that the petitioner submit evidence to establish how the proffered position qualifies as a specialty occupation.

In response, counsel submitted the Department of Labor's O*NET data and description for the position of Interpreters and Translators. In addition, counsel submitted a document identified as an "expert opinion evaluation" dated June 14, 2001 and written by a [REDACTED] from Morningside Evaluations and Consulting in New York City. According to the petitioner, this document examined both the beneficiary's educational and work experience. Counsel described this document as being supportive of the proffered position requiring specialized knowledge and of the beneficiary having the equivalent of a bachelor's degree with that required specialized knowledge. With regard to the director's comments on the beneficiary being over-qualified for the proffered position, counsel referred to Matter of Downtown Senior Center, 91-INA-119 (May 18, 1992). According to counsel, this decision determined that an employer may not reject an applicant because the applicant is over-qualified. Counsel also submitted a copy of a State of Georgia Department of Labor Prevailing Wage Request Form that indicated the prevailing wage for the position of Interpreter and Translator was \$8.67. The description of the job duties to be performed were listed as the following:

Interpret and translate between English and Spanish and vice-versa. Will specialize in issue pertaining to export orders from the United States to various locations in Mexico, Central America and South America. Employee will assist English-speaking CEO in developing and maintaining business contacts throughout Latin America. Responsibilities will include initiation, processing and monitoring of exports to Latin American countries and territories. Employee will use English and Spanish in this position and will use appropriate computer programs for billing, communications and monitoring of exports.

In an undated document, the director denied the petition stating

that the petitioner's evidence had not established that the proffered position qualified as a specialty occupation. In reaching this determination, the director stated that counsel had submitted documents in support of a translator position, while the expert opinion examined the beneficiary's education in systems engineering. The director also noted that although the expert opinion examined "a concentration of translation and interpretation," the documents contained no indication of any coursework in translating, foreign language or interpretation. The director also noted that the petitioner had not noted the technical nature of the items to be translated by the beneficiary on the prevailing wage request form, and that the petitioner had not described the technical translating duties as such in the petition and in the support letter. The director stated that adding these technical aspects afterwards was not in keeping with the certification on the Labor Condition Application obtained by the petitioner.

On appeal, counsel summarizes the duties of the proffered position as contained in the petition. Counsel states that following the request for further information, [REDACTED] was requested to do a credential and positional evaluation of the beneficiary and of the proffered position. Counsel states that in its decision the Service failed to consider the alien would be translating technical documents. Counsel asserts that the Service has recognized positions such as translator/interpreter and liaison as specialty occupations. Counsel refers to an *Interpreter Releases* article that examined a previous Administrative Appeals Office decision that found a translator position to be a specialty occupation. Counsel notes that the Administrative Appeals Office found that the position primarily combined the duties of a translator and technical writer.

Counsel also asserts that the beneficiary is qualified for the position of translator/interpreter and liaison based on her degree, her numerous years of experience at other companies with similar duties. The professional experiential evaluation which counsel submitted also indicates the beneficiary is qualified.

Finally, counsel states that the LCA submitted for the instant petition is valid. He submits an additional Georgia Department of Labor Prevailing Wage Request Form dated September 4, 2001 that described the proffered position more closely to the description contained in the original petition. Counsel states that this second submission came up with the same prevailing wage as the initial submission. He also states that it is impossible to include a description of all duties any job would include on the prevailing wage request forms.

Upon review of the record, the director's comments directed at the contents of the wage request form appear to be immaterial to this proceeding. Both the initial wage request form and the original petition mentioned translation elements in the proffered position. In as much as wage determinations are under the purview of the

Department of Labor and do not bear on whether a position qualifies as a specialty occupation, this issue shall not be addressed further.

With regard to the primary issue in this proceeding, namely, whether the proffered position is a specialty occupation, various factors considered by the Service when determining the industry standard include: whether the Occupation Outlook Handbook (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)).

Upon review of the record, the proffered position appears to contain two major elements, the translation of technical documents for high tech computer equipment for a major client of the petitioner, and then liaison work for the petitioner's export business in Latin America. The petitioner has stated that the translation element will take fifty percent of the beneficiary's work hours, while the time to be spent on the liaison element is undefined. The petitioner also has established that the beneficiary will not be writing the technical documents, but rather translating them. Other job elements such as designing a web page and setting up computer files are also undefined with regard to time. As such the position appears to be an amalgam position, combining elements of translation and editing as a translator/editor of technical documents with elements of a sales representative of technical materials, in dealings with the petitioner's clients who are buying computer supplies and systems.

In reference to the occupation of translator/interpreter, on page 596, the Handbook provides very little information with regard to this job classification. The duties are described as "translate or interpret written, oral, or sign language text into another language for others." There is no information on requirements for the job. The Handbook only states that the most significant source of training is long-term on-the-job training.

With regard to the technical writer/editor classification, the Handbook states the following on page 145: "Most jobs require a college degree either in the liberal arts-communications, journalism, and English are preferred-or a technical subject for technical writing positions." On page 146, the Handbook continues: "Technical writers develop scientific or technical materials, such as scientific and medical reports, equipment manuals, appendices, or operating and maintenance instructions. They also may assist in layout work."

The Department of Labor's Occupational Outlook Handbook,

(Handbook), 2002-2003 edition, examines the occupation of sales representatives on page 368.

A bachelor's degree increasingly is required; nevertheless, some individuals with previous sales experience enter the occupation without a college degree. . . Sales representatives are an important part of manufacturers' and wholesalers' success. Regardless of the type of product they sell, their primary duties are to interest wholesale and retail buyers and purchasing agents in their merchandise, and to address any of the client's questions or concerns. . . .

With regard to training and education for the sales representative position, on page 367, the Handbook states the following:

The background needed for sales jobs varies by product line and market. Most firms require a strong educational background and increasingly prefer or require a bachelor's degree as the job requirements have become more technical and analytical. Nevertheless, many employers still hire individuals with previous sales experience who do not have a college degree. For some consumer products, factors such as sales ability, personality, and familiarity with brands are as important as a degree. On the other hand, firms selling complex, technical products may require a technical degree in addition to some sales experience.

With regard to the final criterion of 8 C.F.R. 214.2 (h)(4)(iii)(A), namely that 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, it appears that the elements of the translator/editor and technical liaison position that are contained in the original petition require substantive knowledge of technical subjects, as well as extensive translating skills and experience. The beneficiary's translating duties involving technical manuals appear to be much more complex and specialized than simple translations from one language to another. In addition, the Handbook states that "firms selling complex, technical products may require a technical degree" for sales representatives in technical areas, in addition to stating that "most jobs require a college degree" with regard to technical editors. Thus, the petitioner's requirement of a bachelor's degree in a technical area along with technical translating skills for the proffered position is not excessive. Thus, the petitioner has established the fourth criterion of 8 C.F.R. 214.2 (h)(4)(iii)(A). Accordingly, the director's basis for denying the petition has been overcome.

With regard to counsel's reference to a previous AAO decision on a translator position, it is noted that while 8 C.F.R. 103.3(c)

provides that Service precedent decisions are binding on all Service employees in the administration of the Act, unpublished decisions are not similarly binding.

The beneficiary also appears to be qualified to perform the duties of the proffered position. The original petition provided documentation that the beneficiary has a bachelor's degree in systems engineering. An educational equivalency report established this foreign degree as the equivalent of the United States bachelor's degree in computer engineering. With regard to translation coursework, her college transcript indicates two courses in technical English. With regard to the technical aspect of the proffered position that requires knowledge of computer systems, and equipment, which would equate to the sales representative part of the proffered position, the beneficiary appears qualified by virtue of her university education.

With regard to the beneficiary's qualifications as a translator, the petitioner submitted three letters from previous employers of the beneficiary with regard to her work in the translation of technical materials over a span of sixteen years. A letter from the Information Technology manager of the Compania Nacional de Chocolates stated that the beneficiary had worked for the company from 1984 to 1991. For approximately four years the beneficiary worked as a programmer for the Management Information System department and then she worked for the following four years as the assistant to the Information Center. In this latter position, she assisted in the translation of articles for the president and for the fomentation department, among other duties. A letter from [REDACTED] in Medellin, Colombia, stated that the beneficiary worked from 1992 to 2000 with this company. The letter in describing a range of administrative and managerial job duties, stated that the beneficiary was in charge of all communications related to suppliers from abroad; translation into English of the company's product catalogue and literature dealing with specifications and uses of each of the products. A letter from ColCeramic Organizacion Corona, another Colombian company, stated that the beneficiary had translated approximately three thousand pages from English to Spanish for the company. According to the letter, the translations dealt with user's guides of various modules of a BPCS system that was being installed at the company.

With regard to judging whether the beneficiary's extensive practical experience in translating is sufficient to establish her ability to perform the translation duties of the proffered position, 8 C.F.R. 214.2 (h) (4) (iii) (D) states:

. . . equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be

determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association of society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college level training the alien lacks. . . .

With regard to 8 C.F.R. 214.2 (h) (4)(iii)(D)(1), the petitioner submitted an expert opinion from the Morningside Evaluations and Consulting on the beneficiary's educational and work experience. This document does not establish that [REDACTED] the evaluator of the beneficiary's educational and work experience, has the authority to grant college level credit in the specialty of translator/editor. This document cannot be used to meet the requirements of 8 C.F.R. 214.2 (h) (4)(iii)(D)(1). However, the contents of this document can be used as guidance in the Service's own analysis of the beneficiary's practical experience as outlined in 8 C.F.R. 214.2 (h) (4)(iii)(D)(5).

Upon a review of the record, it appears that the beneficiary has performed translation work for at least three companies for some

twelve years. From 1988 to 1992, the beneficiary worked with the Compania Nacional de Chocolates, S.A., where she assisted the president and business development department in translation. The beneficiary then worked for eight years with [REDACTED] company in charge of communications dealing with suppliers from foreign countries and translations to English for the product catalogue for the company and literature on the description and uses of company products. Recognition of the beneficiary's work in translations was placed on the record by the ColCeramica company which commented on her translation of some 3,000 pages of technical materials and her work performance.

Within the parameters outlined in 8 C.F.R. 214.2 (h) (4)(iii)(D)(5), as to the equivalency of practical experience to college level work, the beneficiary appears to have met this criterion. Some twelve years of translation work would equate four years of college level work. The information provided by various employers described progressively more responsible positions directly related to her translating duties. The letters submitted by company executives can be viewed as recognition of the beneficiary's expertise in the area of technical translation. Thus, the petitioner has established that the beneficiary is qualified to perform both the technical computer knowledge and the translation elements of the proffered position.

In conclusion, the petitioner has established that the proffered position is a specialty occupation based on 8 C.F.R. 214.2 (h) (4)(iii)(D)(5), and the petitioner has established that the beneficiary is qualified to perform the proffered position.

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. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.