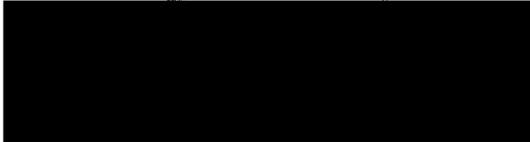


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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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

**PUBLIC COPY**



MAR 12 2003

File: LIN-01-275-54408 Office: Nebraska Service Center

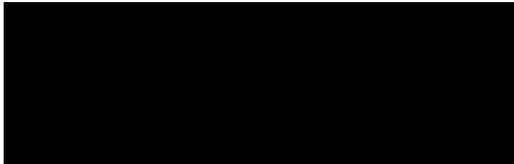
Date:

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 clearly unwarranted  
invasion of personal privacy

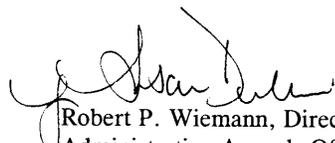
INSTRUCTIONS:

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 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 a business providing engineering, technology, staffing, and multi-media services. It has more than 3500 employees and a stated gross annual income of \$275 million. It seeks to employ the beneficiary as a technical interpreter/translator for a period of three years. The director determined that the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the services of the offered job.

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 failed to establish that the proffered position requires a bachelor's degree in a specific specialty. The director also determined that the beneficiary's bachelor's degree in teaching English as second language (TESL) did not appear to be related to the proposed duties. On appeal, counsel argues that the proposed duties of the proffered position, which include translating business and other highly technical documentation, are so complex as to require a baccalaureate degree. Counsel asserts that the fact that the beneficiary has attained a bachelor's degree in (TESL) more than qualify her to perform the duties of the offered job.

In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the beneficiary in the offered position as follows:

Technical translation of business correspondence including business plans, communications, technical data, and meeting minutes, from Japanese to English and vice-versa. The documents to be translated will include weld specification sheets which show the purpose, facility power requirements, clamping method, design simulation requirements, JIG base transferring requirements, job responsibility, and basic schedule of the product installation. Also translated are Safety Circuit Design Standards which contain examples of actual circuits, the sequence of emergency stop circuit, safety fence circuit, enabling SW circuit, and photo curtain circuit.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record establishes that the beneficiary earned a bachelor of arts degree in TESL in December 2000 from Ohio Dominican College in Columbus Ohio. The record further shows that the beneficiary received a diploma after completing a two year program at the

Nagano Prefectural College in Japan in March 1998. This diploma indicates that the beneficiary completed the whole course of study for English and American literature and language at this institution. While the record does not contain an evaluation of the beneficiary's foreign education as required by 8 C.F.R.

§ 214.2(h)(4)(iii)(D)(3), the beneficiary's familiarity with Japanese appears to derive from the fact that she is a native born speaker who received the majority of her education in that country. The beneficiary appears to be fluent in both English and Japanese. Therefore, it is concluded that the petitioner has overcome this basis of the director's denial by establishing that the beneficiary is qualified to perform services in the offered job.

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.

The proffered position is that of an interpreter/translator. A review of the Department of Labor's (DOL) *Occupational Outlook Handbook*, (*Handbook*), 2002-2003 edition, at page 596, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as an interpreter/translator. Rather, the most significant source of training is long-term on-the-job training. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position.

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 with bachelor's degrees in a specific specialty in parallel positions.

Counsel argues that the proposed duties of the proffered position, which include translating business and other highly technical documentation, are so complex as to require a baccalaureate degree. Counsel further argues that the proffered position is a specialty occupation because it can be considered professional based on the complexity of its duties alone. To support these arguments, counsel cites the holding reached in *Matter of Caron International*, 19 I. & N. Dec. 791 (Comm. 1988). However, this proceeding is not concerned with membership in the professions, but rather whether the job is a specialty occupation. The term "specialty occupation" is specifically defined in section 214(i) of the Act. That statutory language effectively supersedes the cited decision. While counsel also cites various unpublished AAO decisions in support, such decisions have no precedential effect in this proceeding. See 8 C.F.R. § 103.3(c).

The petitioner has not provided any evidence to demonstrate that the proffered position's duties include the translation of material that is highly technical in nature. Moreover, the duties of the proffered position do not involve the formulation and drafting of original documents, but rather the translation of previously written material. Even if the offered job involves the translation of technical documents, this activity focuses on the conversion of a document from one language to another and does not require a precise knowledge and understanding of the content and subject matter of such documents. Consequently, the petitioner has failed to establish 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 in a specific specialty.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Therefore, 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. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.