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

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ADMINISTRATIVE APPEALS OFFICE
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MAY 01 2003

File: SRC-02-006-56806 Office: Texas Service Center

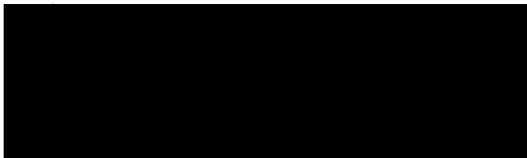
Date:

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)

PUBLIC COPY

IN BEHALF OF PETITIONER:



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.

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 travel and tour services with seven employees and a stated gross annual income of \$1.8 million. It seeks to employ the beneficiary as a business translator for a period of three years. The director determined that the petitioner had not established that the proffered position is a specialty occupation

On appeal, counsel submits a brief and additional documentation.

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

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.

The director denied the petition because the petitioner failed to establish that the proffered position requires a bachelor's degree

in a specific specialty. On appeal, counsel states that the duties of the proffered position, which include translating business documents, are so complex as to require a baccalaureate degree. Counsel contends that the petitioner has previously hired an individual with the equivalent of a bachelor's degree in English for this position, and that the Service (now the Bureau) approved the H1-B visa petition submitted on this person's behalf. Counsel claims that the degree requirement is common to the industry and that the testimonial letter contained in the record supported this claim. Counsel asserts that the fact that the beneficiary has attained the equivalent of a bachelor's degree in English more than qualifies her to perform the duties of the offered job.

Counsel's arguments on appeal are 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 a letter that accompanied the initial I-129 petition, counsel described the duties of the beneficiary in the offered position as follows:

Out/bound Travelling Business, which is focus[ed] on business and service for American clients who wish to visit China and Asia; and Inbound ones, which offers the [sic] consulting information for Chinese visitors to [the] US [sic]. Generally speaking, she is responsible for translating travel documents and other material between Chinese and English, and between Japanese and English. Read and rewrite material relating to travel information to tourists, such as historical sites, scenic areas, and other tourist attractions. For clients who plan to have international travel, she gives the [sic] information of [sic] customs regulations, required papers and tourist attractions and recreations. She also designs the travelling route and tour itineraries according to clients' willingness and requirement in the language clients need. Moreover, she also helps clients to obtain visa[s] from countries of destination.

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.

Counsel contends that the proffered position is a specialty occupation because it has been assigned particular Specific Vocational Preparation (SVP) and General Education Development (GED) codes in the Department of Labor's, (DOL) *Dictionary of Occupational Titles, (DOT)* (4th Ed., Rev. 1991). However, the Bureau does not consider the *DOT* a persuasive source of information regarding whether a particular job requires the attainment of a bachelor's degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The DOL's *Occupational Outlook Handbook, (Handbook)*, provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Bureau is not persuaded by a claim that the offered position is a specialty occupation simply because the DOL has assigned it specific SVP and GED ratings in the *DOT*.

The duties of the proffered position appear to combine those of an interpreter/translator with those of a travel agent. A review of the DOL's *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.

Similarly, a review of the *Handbook* at pages 376-378, does not list any requirement of a baccalaureate degree in a specific specialty for employment as a travel agent. The minimum requirement is a high

school diploma or its equivalent for entry into travel agent positions. As technology and computerization are having a profound effect on the work of travel agents, some form of specialized training, such as that offered in many vocational schools and adult public education programs, is becoming increasingly important. Certain personal qualities and participation in in-house training programs are often considered as significant as the beneficiary's specific educational background. In view of the foregoing, it is concluded that the petitioner has not demonstrated that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

Counsel's contention that the petitioner has previously hired an individual with the equivalent of a bachelor's degree in English for this position, and that the Bureau approved the H1-B visa petition submitted on this person's behalf is not persuasive. Rather, the evidence of record shows that this prior petition was automatically revoked by the Bureau after the petitioner specifically requested that this petition be withdrawn. Even if this petition had initially been approved, the record of proceeding, as presently constituted, does not contain a copy of the approved visa petition and its supporting documents. It is, therefore, not possible to determine definitively whether it was approved in error or whether the facts and conditions are the same in the two petitions. Determinations of eligibility are based on the totality of evidence available to this Bureau at this time. The AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S. Ct. 51 (U.S. 2001). Therefore, the petitioner cannot be considered to have persuasively demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position.

In an attempt to establish evidence of an industry standard, the petitioner submitted a letter signed by [REDACTED] president of the Atlanta Association of Interpreters and Translators. Mr. [REDACTED] stated that "[a]s a minimum requirement, a bachelor[s] degree in the target language is needed to be a qualified business translator." However, one letter does not constitute evidence of an industry standard. Additionally, the record does not contain any independent documentary evidence to corroborate Mr. [REDACTED] statement. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972). Consequently, the petitioner has failed to demonstrate that businesses similar to it 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 states 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 asserts 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 statements, 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, 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.