



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: EAC 03 049 54092 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:

[Redacted]

AUG 31 2004

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

*Robert P. Wiemann*

*[Signature]*  
Robert P. Wiemann, Director  
Administrative Appeals Office

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner operates a full service security agency. In order to employ the beneficiary as an administrative assistant, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition on the basis that the petitioner had not established that the proffered position meets any definition of a specialty occupation as outlined in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contends that the evidence does not support the director's decision, but, on the contrary, establishes that the proffered opposition is a specialty occupation.

In reaching its decision, the AAO reviewed the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief.

Upon consideration of the entire record, the AAO has concluded that the director was correct in denying the petition, as the evidence of record is insufficient to establish that the proffered position qualifies as a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the appeal will be dismissed and the petition will be denied.

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.

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.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

Paragraph 3 of the letter of support that the petitioner filed with the Form I-129 stated:

[The beneficiary’s] primary duties as a full-time administrative assistant will coordinate the office services such as personnel, budgeting, document preparation. In addition[,] [the beneficiary] will handle marketing of national and international [sic], especially Russian businesses and perform translation of Russian documents and on occasion act as a translator. [The beneficiary’s] direct supervisor will be the president of the company.

The thrust of counsel’s brief on appeal is that the translation aspects of the proffered position make it a specialty occupation. However, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). This provision assigns specialty occupation status to those positions for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position’s duties.

The AAO recognizes the Department of Labor’s *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations, and it consulted the *Handbook’s* 2004-2005 edition in its consideration of this appeal.

To the extent that the proffered position is described in the record, it appears that counsel is correct in asserting that it is a “hybrid combination of administrative assistant and translator.” In fact, as described in the record, the position even includes limited interpreter duties. However, the *Handbook* indicates that employers hiring in these positions do not normally require at least a bachelor’s degree or the equivalent in a specific specialty.

It has been noted that the *Handbook* indicates that “almost all interpreters and translators have a bachelor’s degree.” However, the *Handbook* also indicates that there is no general requirement that the bachelor’s degree be in any specific specialty, or even in the language for which a person is being hired to translate or interpret.

The AAO finds that the evidence of record does not effectively refute the *Handbook’s* information, and, accordingly, it also finds that the petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the petitioner has not satisfied either of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong assigns specialty occupation status if the evidence establishes that there is a degree requirement which is common to the industry in positions which are both (1) parallel to the proffered position, and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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." See *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)).

As already discussed, the *Handbook* does not report that the proffered position requires a degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry.

Next, the evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong provides that "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."

The record does not support counsel's assertion (at pages 2 and 3 of the brief) to the effect that the proffered position is so unique and specialized that it can only be performed by a person with at least a bachelor's degree in Russian. (Brief, at pages 2 and 3.) 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). Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, the evidence of record does not establish that the Russian translation/interpretation aspects upon which counsel focuses could not be performed by a native speaker of Russian who has not achieved a degree in the language.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position – is not a factor in this proceeding, as the evidence of record does not address this provision.

Finally, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) which qualifies a position as a specialty occupation if its specific duties are so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The evidence of record does not establish that performance of the administrative assistant position requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in any specific specialty. To the extent that they are portrayed in the record, the duties do not appear so specialized or complex

as to be beyond the capabilities of a person with administrative abilities and fluency in Russian, however achieved.

Because the proffered position does not qualify as a specialty occupation by application of any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's denial of the petition shall not be disturbed.

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.