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U.S. Citizenship
and Immigration
Services

102



DEC 14 2004

FILE: SRC 03 027 52313 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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 is a corporation engaged in the translation services business. In order to employ the beneficiary as a translator, the petitioner endeavors to classify the beneficiary 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 found that the petitioner failed to adequately respond to the request for additional evidence (RFE). The service center had issued the RFE on finding, first, that the initial evidence in support of the petition did not establish that the proffered position was a specialty occupation; and, second, that the letter of support's mention that the beneficiary would "take over the business" raised the issue of whether there would be an employer-employee relationship between the petitioner and the beneficiary as required by regulation. The director denied the petition as abandoned, invoking that portion of the regulation at 8 C.F.R. § 103.2(b)(13) that mandates denial for abandonment "[i]f all requested initial evidence and requested additional evidence is not submitted by the required date." The AAO notes that the petitioner timely responded to the RFE, and that while the evidence may be insufficient to establish eligibility under the statute and regulations, the petition should not have been denied for abandonment, or lack of prosecution under 8 C.F.R. § 103.2(b)(13).

On appeal, the petitioner in effect contends that the director failed to recognize that it is a business necessity for translating firms to require that their translators have at least a bachelor's degree level of knowledge in the language(s) to be translated. In pertinent part, and verbatim, the petitioner states that no translation company "could entrust a formal job to a person who has only 'on the job training' less yet transcendental documents that in practical are very usual [sic], since the translation of documents requires the profound knowledge of a language not only being able to speak it, but also being proficient in sentence structure, grammar, punctuation, and mechanics."

The AAO considered the entire record of proceeding before it, including: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the RFE; (3) the matters that the petitioner submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's brief and its attached copy of the RFE. For the reasons discussed below, the AAO has determined that, the director was correct in denying the petition, although he should have stated a basis different than abandonment.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for 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 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] 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 [2] 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.” (Italics added.)

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.

CIS has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The AAO finds that the service center's RFE was justified, as the Form I-129 and the supporting information filed with it had not provided adequate information to substantiate that the proffered position qualified as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO also finds that the petitioner's response to the RFE was insufficient to remedy the deficiencies cited in the RFE. Therefore, the

AAO finds that the petition must be denied because the petitioner failed to establish that the proffered position is a specialty occupation.

On the employer-employee issue, the AAO finds that, while the RFE reply in this proceeding was ineffective and largely repetitive of the information initially submitted, on the particular facts of this petition, the petitioner's failure to provide additional information does not merit denial under 8 C.F.R. § 103.2(b)(13) for abandonment or failure to aid a material line of inquiry. The evidence indicates that, regardless of the beneficiary's "taking over" the business, the beneficiary would be working for the corporation which is the petitioner. CIS has generally regarded a beneficiary and a corporate petitioner as separate entities. Even if the beneficiary here were to rise to the top management position in its petitioner's corporate structure, he would still be technically an employee of the corporation.

However, the director was correct in denying the petition, because the evidence on the merits did not establish that the proffered position is a specialty occupation.

Despite the RFE's request for more detailed information about the proffered position, the petitioner's response merely repeated the information presented when the petition was first filed:

[The petitioner's] duties would be as we said in our Letter of Presentation: "Translating documents and other material from one language to another: Reads material and rewrites material in specified language or languages, following established rules pertaining to factors, such as word meanings, sentence structure, grammar, punctuation, and mechanics."

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which assigns specialty occupation status to a position 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 *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. The AAO finds that the information on the translator occupation that is presented in the current, 2004-2005 edition of the *Handbook* establishes that translator positions do not normally require a bachelor's degree or its equivalent in a specific specialty. The decisive language is, "Although a bachelor's degree is almost always required, interpreters and translators note that it is acceptable to major in something other than a language." (*Handbook* 2004-2005 edition, at page 263). As the evidence of record does not refute the *Handbook's* information about the requirements for the proffered position, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

The first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) is not satisfied, because there is no showing of a specific-specialty degree requirement that is common to the petitioner's industry in positions that are both (1) parallel to the one proffered here and (2) located among organizations 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 discussed earlier, the evidence does not establish the proffered position as one for which the *Handbook* reports a degree requirement in a specific specialty. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry. Finally, the Internet documents that the petitioner submitted into the record have little evidentiary impact. They are too few to be indicative of an industry-wide practice. Also, they are inconsistent: one organization lists only translating experience as a qualifying requirement, while the other boasts that all of its translators hold university linguistic degrees. Finally, the information in the record about the duties of the proffered position, its translation products, and its clientele is too limited and generalized to reasonably compare it to the positions described that require linguistic degrees.

The AAO also finds that 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). Under this provision, instead of proving a common degree requirement under the first prong, "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." As clearly reflected in the RFE job duty information earlier cited in this decision, the evidence of record provides no grounds for finding that the proffered position is more complex than or in any sense unique from ordinary, general translator positions for which the *Handbook* reports no requirement for a bachelor's degree in a specific specialty.

Next, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty, is not a factor in this proceeding: the petitioner presented no evidence that it has previously offered a translator's position.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties 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. In fact, the record does not establish that the duties are more specialized and complex than those that should be expected in an ordinary, general translator position with which the *Handbook* indicates no usual association with a baccalaureate or higher degree in a specific specialty.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition is denied.