



U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 011 50249 Office: CALIFORNIA SERVICE CENTER Date:

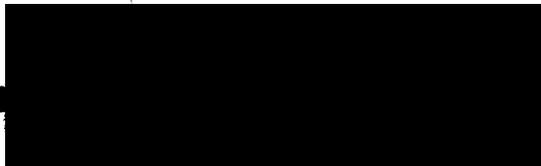
IN RE: Petitioner:
Beneficiary:



JUL 21 2004

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:



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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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 is a translation and interpretation service that seeks to employ the beneficiary as a translator and interpreter. 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 denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and other documentation.

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.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a translator and interpreter. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 14, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail translating documents and interpreting conversations from Japanese into English and vice-versa. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in English language and literature.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the most significant source of training for translators and interpreters was long-term on-the-job training. The director noted that, while some translator and interpreter positions could be classed as a specialty occupation, the petitioner had failed to establish that the instant position required a degree in a specific field such as medicine, law, or engineering. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position meets all four of the criteria described above. Upon review of the record, however, it is concluded that the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. As the director pointed out, according to the *Handbook*, a baccalaureate or higher degree in a specific specialty is not a minimum requirement to perform the duties of a translator or interpreter.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for similarly titled positions. The employers issuing those postings do not require a degree in a specific specialty; rather, a variety of degrees appear to be acceptable for the positions to be filled. Thus, the advertisements have little relevance.

The record contains a letter from [REDACTED] chief career counselor and placement officer at the Monterey Institute of International Studies, Graduate School of Translation and Interpretation. [REDACTED] states that the industry standard for technical translators includes a degree requirement. [REDACTED] also notes,

however, that some employers of technical translators prefer bachelor's degrees in engineering and master's degrees in translation. First, [REDACTED] opinion does not reflect that of any professional association, and second, the information he provides indicates that a degree in language is helpful but is not an industry standard.

The record also includes an example of a technical translation to be performed. This documentation does not support the complexity or uniqueness of the proffered position, in that it does not establish that such a translation could only be performed by an individual with a degree in language. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to 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. The record contains the resumes of the petitioner's employees who perform duties comparable to those pertaining to the proffered position. The AAO notes that these employees possess degrees in various fields. The resumes do not support the contention that the petitioner normally hires only individuals with language degrees.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The petitioner requires a bilingual individual who possesses university-level writing skills in English and Japanese. The university-level writing and research skills necessary to perform the proposed duties are not obtainable only through the study of language and literature; numerous courses of study provide an environment in which grammar and vocabulary can be enriched. In addition, the fluency required to perform accurate translations and interpretations is not usually obtained in the classroom. Finally, the documentation on the record does not indicate that the proffered position requires the knowledge obtained through degree level study of a specific specialty such as engineering, law, or computer science, even though these appear to be among the topics for translation. In sum, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.