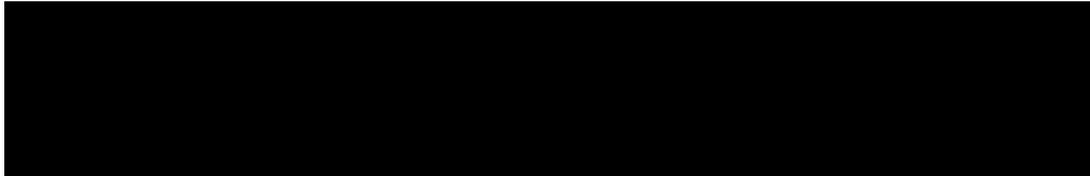




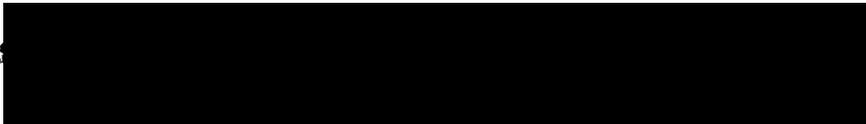
U.S. Citizenship
and Immigration
Services



FILE: LIN 02 160 50853 Office: NEBRASKA SERVICE CENTER

Date: *July 22 2006*

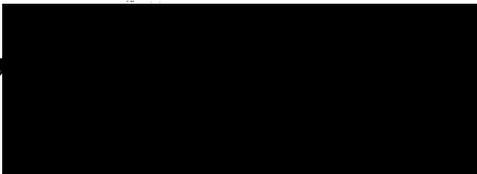
IN RE: Petitioner:



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:



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

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DISCUSSION: The service center director initially approved the nonimmigrant visa petition. Based upon information obtained during the beneficiary's nonimmigrant visa interview process at the U.S. consulate, the director determined that the beneficiary was not eligible for the benefit sought. The director, therefore, properly served the petitioner with a notice of his intent to revoke the approval of the petition. The director ultimately revoked the approval of the 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 company that provides training in sales, marketing, advertising and management that seeks to employ the beneficiary as a translator/instructor. 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).

On February 18, 2003, the director issued a notice of intent to revoke the approval based on information from the United States Consulate in St. Petersburg, Russia, indicating that the proffered position did not appear to be a specialty occupation. The petitioner was given 30 days to submit evidence in support of the petition and in opposition to the revocation. On March 19, 2003, counsel responded to the notice.

In response to the director's notice of intention to revoke, the petitioner provided an affidavit substantially adding to the original position description. The job description submitted with the petition included duties solely related to translation, despite the title of translator/instructor. In the response to the notice of intention to revoke, the position description included all of the original translation duties, as well as duties for an instructor and coach. On appeal, the petitioner provides information regarding the need for a training coach to have a bachelor's degree.

Citizenship and Immigration Services (CIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). As such, the appeal will be adjudicated on the basis of the information that was before the director, and new information submitted after the director's adjudication shall not be considered for any reason.

Section 214(i)(1) of the Immigration and Nationality Act (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 notice of intention to revoke approval of the petition; (5) the petitioner’s response to the notice of intent to revoke; (6) the director’s decision revoking approval of the petition; and (7) 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. Evidence of the beneficiary’s duties includes: the I-129 petition; the petitioner’s March 13, 2001 letter in support of the petition; and the petitioner’s response to the director’s notice of intent to revoke the petition. As discussed above, the only duties that will be considered by the AAO are those that were before the director during the initial adjudication of the petition. According to this evidence, the beneficiary would perform duties that entail: providing simultaneous and consecutive translation of sales training seminars from one language to the other during live presentations and audio and video presentations; translating documents and other written materials developed by the petitioner and distributed to students enrolled in distance learning programs focusing on strategic sales and marketing techniques; translating students’ responses to course assignments; providing instruction to foreign students; and providing simultaneous translation to support sales efforts in other countries. The petitioner indicated that a qualified candidate for the job would possess a bachelor’s degree in translation and interpretation.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further 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 notice of intent to revoke did not accurately describe the proffered position, and offered an affidavit by the petitioner's president clarifying the employment duties. Counsel also states that the beneficiary did not have adequate time to explain the position to the consular officer during her interview. Finally, counsel states that many translation degree programs offered by United States universities require a bachelor's degree for entry.

Upon review of the record, 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 noted, no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a translator or interpreter job.

The petitioner did not submit evidence regarding parallel positions in the petitioner's industry. On appeal, counsel submits information indicating that various U.S. universities require a bachelor's degree for entry into the programs. This documentation is for master's degree programs, so it stands to reason that a bachelor's degree would be required for entry. This does not, however, establish that a degree is required for entry into the occupation. Indeed, in referring to the website for the American Translators Association, one can apply to take the exam to become a certified translator on the basis of one's experience alone. The issue of whether the position of an instructor or coach with the petitioner is a specialty occupation is irrelevant, as the duties were not a part of the original petition. 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. On appeal, counsel provides a chart indicating that "Employee A" has a bachelor's degree in business and "Employee B" has a bachelor's degree in journalism and advertising. Even if this chart were adequate evidence of the petitioner's hiring practices, it would not establish that a degree *in a specific specialty* is required for entry into the occupation. Therefore, the petitioner has not met its burden of proof in this regard.

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. Therefore, 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).

Under CIS regulations, the approval of an H nonimmigrant worker petition may be revoked on notice under five specific circumstances. 8 C.F.R. § 214.2(h)(11)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(h)(11)(iii)(B).

In the present matter, the director provided a detailed statement of the grounds for the revocation but did not cite to the specific provision of the regulations as a basis for the revocation. Referring to the eligibility criteria at 8 C.F.R. § 214.2(h)(4)(iii), the director reviewed the rebuttal evidence and concluded that the petitioner had not established that the proffered position is a specialty occupation. Upon review, the director revoked the approval on the basis of 8 C.F.R. § 214.2(h)(11)(iii)(A)(5): “Approval of the petition violated paragraph (h)” of 8 C.F.R. § 214.2, and the AAO concurs with the director’s findings.

Since the proffered position is not a specialty occupation, the director properly revoked approval 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.