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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: WAC 02 145 50407 Office: CALIFORNIA SERVICE CENTER Date: **MAR 15 2004**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

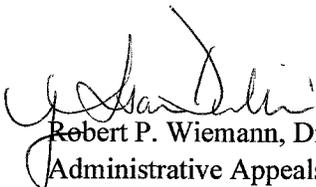
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[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, 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 multilingual communication company, and seeks to employ the beneficiary as a Spanish editor and 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 denied the petition on the basis that the proffered position was not a specialty occupation. On appeal, counsel submits a brief and additional information.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

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

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

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 proceedings 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) the Form I-290B with counsel’s brief and attachments. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a Spanish editor and translator. Evidence of the beneficiary’s duties includes: the I-129 petition with attachment; and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would: detect, correct, and edit mistakes in the use of the Spanish language, whether at the syntactical, semantic, conceptual, typographical and cultural level; review freelance translators’ assignments; prepare detailed language notes; edit and translate banking, accounting and auditing industries from the Spanish language into English or conversely, find the equivalent technical term in the language to be translated and/or grasp the underlying concepts by experience and knowledge of commercial practice, legislation and how particular areas of concern differ from one targeted country to another; prepare detailed language notes with industry and client-specific glossaries for such documents to submit to teams of freelance-linguists to provide consistency and accuracy throughout the translation; and translate using required terminology of the target language. It is the petitioner’s position that the minimum education required for the offered position is a bachelor’s degree. The petitioner does not specify any particular field of study for the required degree.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief, stating that the proffered position qualifies as a specialty occupation as it meets the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. Factors often considered by CIS when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook*, (*Handbook*), reports that the industry requires a degree; whether an industry 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/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The petitioner asserts that the offered position is similar to that of an editor, and as such, the position qualifies as a specialty occupation. The duties of this position are not those of a writer or editor.

They are the duties normally performed by translators. The beneficiary is primarily translating banking, financial, and business documents from one language to another, or reviewing the work of freelance translators. The documents that she will translate are not highly technical documents requiring knowledge in a particular area or field of expertise in order to perform the translation. The beneficiary does have work experience that will assist her in translating financial documents. The knowledge obtained from this work experience, however, is not required to perform the duties of the proffered position. Rather, it is the beneficiary's proficiency in a specific language(s) that is important. There is no requirement in the *Handbook* that a translator have a degree in a specific specialty to work as a translator. The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations and offers no evidence in this regard. Further, the duties of the proffered position are routine duties for translators, and are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner states that it meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), in that it would only consider degreed individuals for the position offered to the beneficiary. The petitioner has not, however, provided any proof of that assertion. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Even if that were the case, the position would still not qualify as a specialty occupation in that performance of the duties associated with the position do not require the theoretical and practical application of a body of highly specialized knowledge.

Finally, the petitioner has not established that the nature of the duties to be performed is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, in a specific specialty. The beneficiary will translate business and financial documents from one language to another, or supervise/review translations done by freelance translators. These are normal duties for translators, or translator supervisors, and those positions do not routinely require a bachelor's degree for entry into the positions. The offered position does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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