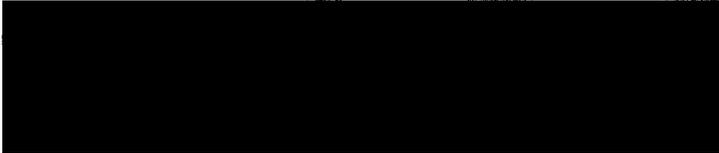




U.S. Citizenship
and Immigration
Services

02



FILE: LIN 02 117 52403 Office: NEBRASKA SERVICE CENTER Date:

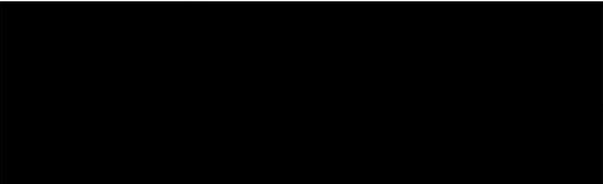
IN RE: Petitioner:
Beneficiary:



MAY 17 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:



Identifying data deleted to
protect clearly unwarranted
invasion of personal privacy

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 Jensen

to Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

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 seafood trader and wholesaler that seeks to employ the beneficiary as a technical 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and other documentation

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 denial letter; (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 technical translator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's February 13, 2002 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 providing Japanese and English translations of contracts, documents, brochures, and sales offerings. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in Japanese or linguistics.

The director found that the proffered position was not a specialty occupation, because 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 the first, second, and fourth criteria described at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO will examine the evidence in light of these criteria.

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. According to the *Handbook*, although employers of translators normally require bachelor's degrees, it is not necessary that the degree be in a specific specialty. A variety of educational backgrounds provide suitable preparation to enter into the proffered position. The record does not contain any evidence to the contrary.

Regarding parallel positions in the petitioner's industry, the petitioner submitted various job postings for translators. As the director pointed out, these job postings call for degrees in a variety of fields. The additional job advertisements submitted on appeal confirm this; for example, one job in the medical field requires a bachelor's degree in social science, linguistics, or health education. The job postings do not demonstrate that an individual must have a degree in a specific specialty in order to enter the field of technical translation.

The AAO has also reviewed the letters submitted from various other companies that require their technical translators to hold bachelor's degrees in Japanese. These letters show that some employers prefer to hire individuals with bachelor's degrees in language, but they do not constitute evidence from professional associations regarding an industry standard. The record does not contain, in the alternative, any documentation to support the complexity or uniqueness of the proffered position. The sample documents provided do not appear to be unique in any way, nor more complex than other trade-related documents for translation. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

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 duties described are routine to those normally associated with the work of technical translators, and, as previously noted, there are numerous routes to enter this field. 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).

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.