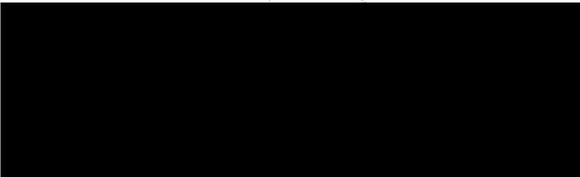




U.S. Citizenship
and Immigration
Services

02



FILE: EAC 04 008 52739 Office: VERMONT SERVICE CENTER Date: SEP 01 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:

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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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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 law firm that seeks to employ the beneficiary as a translator/interpreter. The petitioner, therefore, 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 he determined that the proffered position is not a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation. Counsel submits additional 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 petitioner's letter of support; (3) the director's request for additional evidence, dated October 21, 2003; (4) the petitioner's letter that responds to the director's request; (5) the director's denial letter; and (6) 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 an interpreter/translator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; the director's request for further evidence; and the petitioner's letter in response to the director's request for further evidence. According to the petitioner it has significant representation of clients from the Middle East. According to the initial petition, the beneficiary's duties would involve the translation of legal and corporate documents and business correspondence from Arabic and French to English. In its response to the director's request for further evidence, the petitioner stated that it was a multi-national law firm with a substantial practice in the area of international commercial litigation. The petitioner further stated that the beneficiary's work in translation would include but not be limited to briefs, complaints, answers, replies, depositions, interrogatories, court decisions, international business agreements, and foreign laws. According to the petitioner, the beneficiary would also be required to act as a translator and interpreter in handling Arabic-speaking clients and to assist attorneys in communicating with the same clients. The petitioner indicated that a candidate for the position should possess a bachelor's degree or higher in language interpretation and translation.

The director found that the proffered position was not a specialty occupation and referred to the classification of translators/interpreters in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. Based on the *Handbook* information, the director determined that the most significant training for the proffered position was long-term on-the-job training. 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, the petitioner states that the position of translator/interpreter is a specialty occupation based on the complexity of the job duties. The petitioner states that not just any bilingual person can translate legal documents even if he or she has a legal or judicial background because Arabic, unlike other languages, is divided into categories: spoken Arabic and written Arabic. The petitioner states that legally written Arabic is only mastered by lawyers or other persons in the judicial business or by translators. The petitioner further stated that only a professional translator could understand legal documents since translators are required to take a course in legal translation in their college studies.

The petitioner also states that the AAO had previously determined that the position of technical writer/translator is a specialty occupation and cites a series of AAO decisions listed in the *H-1B Bluebook*. See Section 6:19 Translators/interpreters/technical writers. The petitioner states that it had referred to these AAO decisions in its response to the director's request for evidence; however, the director did not consider these previously decided decisions in his decision. The petitioner states that the requirement for a baccalaureate degree or higher degree for the proffered position is common to similar organizations.

The petitioner further states that the duties of the position are complex, because the translator is required to show a complete understanding and grasp of legal terms and nuances at the level of a practicing attorney. The petitioner asserts that the director's statement with regard to the unknown volume of interpretation and translation services that it performs is arbitrary, capricious, and an abuse of discretion. The petitioner finally states that the above-mentioned case law clearly establishes that in specific areas, the tasks of an interpreter/translator are complex and technical.

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. With regard to the job duties of an interpreter/translator position, the 2004-2005 edition of the *Handbook* states the following:

Interpreters and translators enable the cross-cultural communication necessary in today's society by converting one language into another. However, these language specialists do more than simply translate words—they relay concepts and ideas between languages. They must thoroughly understand the subject matter in which they work, so that they are able to convert information from one language, known as the source language, into another, the target language. In addition, they must remain sensitive to the cultures associated with their languages of expertise.

Translators convert written materials from one language into another. They must have excellent writing and analytical ability. And because the documents they translate must be as flawless as possible, they also need good editing skills.

With regard to training, the *Handbook* states that almost all interpreters and translators have a bachelor's degree.

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. However, specialized training in how to do the work is generally required. A number of formal programs in interpreting and translation are available at colleges nationwide and through non-university training programs, conferences, and courses. Many people who work as conference interpreters or in more technical areas—such as localization, engineering, or finance—have master's degrees, while those working in the community as court or medical interpreters or translators are more likely to complete job-specific training programs.

The *Handbook* therefore establishes that interpreters and translators are usually required to have a baccalaureate degree; however, it does not indicate that the degree has to be in a specific specialty, such as a language. It rather indicates that a baccalaureate degree along with specialized training is required.

Of equal importance to the determination of whether the petitioner has established this criterion is whether the position as described by the petitioner is actually a complex translator/interpreter position. Although the

petitioner submitted a document that it identified as a sample of the translation work done by the beneficiary, which appears to be the text of a law on intellectual property, the record is not clear as to the relationship between this document and the translation needs of the petitioner. The job description for the position does not indicate how much translation will be performed by the beneficiary as opposed to general interpretation for Arabic-speaking clients. The latter work is distinct from the former, in that it does not necessarily require the same level of skills.

With regard to the AAO decisions cited by the petitioner in its response to the director's request for further evidence, and on appeal, these cases represent a variety of jobs, not necessarily similar to the petitioner's position. For example, LIN9500550075 is a decision with regard to a position in a merchant bank with extensive foreign operations, among other duties. The position was viewed to be a complex translator/interpreter position. LIN 9403450946 involved a bilingual specialist for an international automotive parts firm who would instruct and assist Japanese technical personnel in translating and presenting their mechanical drawings in a manner that would appeal to U.S. customers, among other duties. EAC9317751380 involved a supervisor of commercial translators. The record is not persuasive that the proffered position, notwithstanding the identical title of translator/interpreter, is at the same level as the decisions in the previously mentioned AAO decisions.

Furthermore, as correctly stated by the director, the petitioner's initial explanation of the job duties was very abstract. The original description of the job in the initial petition provided very little information on the beneficiary's actual job responsibilities. Although in its response to the director's request for further evidence the petitioner provided a list of the types of documents that the beneficiary might have to translate, the petitioner has yet to specifically identify any actual technical translation that needs to be done on a professional translator/interpreter level, or such factors as the percentage of time that the beneficiary would spend on legal documents as opposed to informal translations of conversations. Without more persuasive evidence, the petitioner has not established that the job offered to the beneficiary meets the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to parallel positions in other law firms, the petitioner refers to the AAO decisions previously mentioned. There is no evidence in the record that any of the previous AAO decisions were for parallel positions in law firms. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. 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 petitioner submitted no documentation as to any previously hired translators/interpreters or individuals currently employed as translators/interpreters. Although the petitioner on appeal refers to an incumbent in the position, there is no further information on any current or previous translators/interpreters employed by the petitioner. Therefore the petitioner has not met this criterion.

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 of the position still lack specificity. Although the petitioner submitted a document that it states was translated by the beneficiary, as previously stated, the record is not clear as to the relationship between this document and the

work to be performed by the beneficiary in the petitioner's law firm. On appeal, the petitioner states that it is a multi-national law firm with a substantial practice in the area of international commercial litigation. The petitioner states that most of the documents handled in its practice deal directly with middle-eastern countries, and in particular, private international law issues of these countries. The petitioner further asserts that many of the documents involved in the litigation require translation into English. The petitioner appears to assert that a person who has the position of translator in its office is required to show a complete understanding and grasp of legal terms and nuances at the level of a practicing attorney. The record is not clear that the petitioner has assigned these similar duties to the beneficiary, who is not an attorney and has only had two courses in legal translation in her baccalaureate studies. Beyond its assertions, the petitioner provides no more evidentiary documentation of any necessary translation work to be performed in the proffered position. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The assertions of the petitioner do not constitute evidence. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). *Matter of Obaigbena*, 19 I&N Dec. 534 (BIA 1988). Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.