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U.S. Citizenship  
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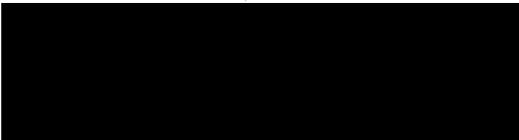
FILE: WAC 03 114 53290 Office: CALIFORNIA SERVICE CENTER Date:

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.

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 specialty foods manufacturer and seeks to employ the beneficiary as a technical writer/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 does not qualify as a specialty occupation. On appeal, counsel submits a brief indicating that the offered position qualifies as a specialty occupation.

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

Section 101(a)(15)(H)(i)(b) of 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 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 fields 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 are 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) the 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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a technical writer/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: translate and edit brochures, food lists, promotional materials, advertising, instructions, packaging and other documents from French, Spanish, and English depending upon the use and destination of each item; work with specialized food items, including, but not limited to spices, ingredients, organic and non-organic preservatives, grains, meats, and vegetables; and develop, write, and edit materials for brochures, advertisements, internal reports, catalogs, and administrative materials. The petitioner does not state that it requires a degree in a particular discipline for entry into the proffered position, but indicates that a "degree in the language required" is the norm in the food industry.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for interpreters and translators, not writers and editors as noted by counsel in his brief. The *Handbook* states that writers and editors communicate through the written word and generally fall into one of three categories: writers and authors; editors; and technical writers. The duties detailed by the petitioner do not fall within the duties for these categories of workers, but rather within the duties of interpreters and translators. Interpreters and translators enable cross-cultural communication by converting one language into another. They relay concepts and ideas between languages and must thoroughly understand the subject matter in which they work so that they are able to convert information from one language into another. The *Handbook* notes that while the educational backgrounds of interpreters and translators vary, a bachelor's degree is almost always required. A degree in a specific specialty, however, is not required. Knowledge of a language in addition to a native language is a given, but beyond that, there are many educational options. Interpreters and translators note that it is acceptable to major in something other than a language in order to successfully perform the duties of the position. Specialized training in how to do the work is also generally required. It is, therefore, apparent that a degree in a specific specialty is not a minimum requirement for entry into the proffered position as

interpreters and translators may come from a variety of educational disciplines. The petitioner has not satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner would also perform some writing responsibilities relating to advertising, catalogues, and administrative materials. Those duties, however, are vaguely described, and it is not possible to determine from the record the complexity of the writing to be performed, or the scope of the writing. As such, the record does not establish, with regard to these duties, that: a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position; a degree requirement is common to the industry in parallel position among similar organizations; the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty; or knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish that these duties meet the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), (2), or (4).

The petitioner states that a degree in a specific specialty is common to the industry in parallel positions among similar organizations, but offers no evidence in this regard except to refer to the *Handbook's* definition of a technical writer. Again, the duties of the proffered position are not those of a technical writer, but those of a translator/interpreter. The petitioner must do more than simply go on the record and allege a particular fact in order to establish that fact. Doing so 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 petitioner does note that CIS has previously recognized the proffered position as a specialty occupation and refers to unreported and unrelated cases. This reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire record of proceedings in the petitions referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as a technical writer/translator. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h). The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not state that it normally requires a degree in a specific specialty for the position offered as the position is new with the company. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the nature of the specific duties is not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, nor are the duties so complex or unique that they can be performed only by individuals with a degree in a specific specialty. The duties to be performed are routine in the industry for translators/interpreters. The petitioner has failed to establish either of the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (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.