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U.S. Citizenship
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FILE: WAC 04 162 54649 Office: CALIFORNIA SERVICE CENTER Date: JAN 27 2006

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is an investment company. It seeks to employ the beneficiary as a multilingual translator and securities analyst assistant and to classify her 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 ground that the record failed to establish that the proffered position qualifies as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a recently established investment company that intends to expand into European markets. The petitioner states that it began operating in 2004, had one employee and gross annual income of \$100,000 at the time of filing, and proposes to employ the beneficiary as a part-time multilingual translator and securities analyst assistant (15 hours/week) to translate business-related documents from German, Polish, and French into English, and to research and analyze investment opportunities in European markets. In response to the RFE the petitioner described the duties of the position, and the percentage of time required by each duty, as follows:

Translating material necessary for the fundamental analysis of companies considered for investing – 70%

- Reading the German, Polish and French source data concerning the German, Polish and French securities market situation and the situation of the particular European companies considered for trading. Source data includes news, quotes, company reports and announcements, earnings estimates, key developments, articles, market reports by European analysts, etc.
- Accessing current information and news sources in the original languages – via internet and news channels – concerning the political and economic situation in the European countries of interest in order to define the factors impacting the overall market indices in the European countries of interest.
- Fast, accurate and reliable translation of all the materials mentioned above from German, Polish and French into English and summarizing [them] for current use on a daily basis and for the trading journal.

Correspondence with European businesses in English, German, French, and Polish – 20%

- Contact with investor relations offices of European companies of interest.

Operating the European trading accounts – 5%

- Responsible for adding the determined securities to the watch list, entering limit, market, stop market and trailing stop, buy and sell orders, any correspondence, contacting over telephone, etc. in the source languages Polish, German, and French concerning any issues related to technical inconveniences with these accounts (concerning the customer service).

Research and Analysis of investment opportunities in securities listed in European markets – 5%

- Research of promising securities listed in the German, Polish, and French markets, assisting the securities analyst by applying technical analysis of charts in different time frames in order to select the best candidates for the following day. As time permits – discuss and participate in determining the best candidates based both on the technical analysis and fundamental approach.

According to the petitioner, the minimum educational requirement for the position is a master's degree in translation/applied linguistics. The record indicates that the beneficiary, a native of Poland, received a diploma as a professional translator into German and French from Johannes Gutenberg University in Mainz, Germany, on October 1, 2001.

In his decision the director referred to information on translators in ONET ONLINE, a Department of Labor resource on occupations, indicating that a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into the occupation. There was no evidence in the record that a specialty degree is common to the investment industry in parallel positions among similar organizations, the director declared, and the petitioner had no history of requiring a degree or its equivalent for the position, which is newly created. The evidence of record did not show that the proffered position was so unique or complex that it could only be performed by an individual with a specialty degree, the director stated, or that the duties of the position are so specialized and complex that baccalaureate level knowledge in a specific specialty is required to perform them. The director concluded that the proffered position did not meet any of the criteria of a specialty occupation enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal the petitioner asserts that the proffered position qualifies as a specialty occupation under two alternative criteria: 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) and (4). As evidence of a common educational standard for translators the petitioner has submitted a series of job postings for such positions, all but one of which require a baccalaureate degree. According to the petitioner, the U.S. government's practice in hiring translators is to require a baccalaureate degree. The petitioner provides a list of U.S. colleges and universities offering baccalaureate and master's degrees in translation and linguistics as further evidence that such a degree is commonly required for translators. While conceding that some translator positions may not require a baccalaureate degree, the petitioner contends that the technical nature of the subject matter to be translated by the beneficiary does require a baccalaureate level of education. The petitioner asserts that the proffered position is unique and specialized, requiring a specialty degree, because the three languages to be translated into English – German, French, and Polish – are all in different language families and the documentation to be translated contains complicated financial and economic information requiring more than a routine knowledge of those languages. Because of the specialized subject matter of the translations, the petitioner concludes, performing the translating and related duties of the proffered position requires baccalaureate level knowledge.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The occupational category of translator is described, in pertinent part, in the DOL *Handbook*, 2004-05 edition, at 261-62:

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

Translating involves more than replacing a word with its equivalent in another language; sentences and ideas must be manipulated to flow with the same coherence as those in the source document, so that the translation reads as though it originated in the target language. Translators also must bear in mind any cultural references that may need to be explained to the intended audience Some subjects may be more difficult than others

The way in which translators do their jobs has changed with advancements in technology. Today, nearly all translation work is done on a computer, and most assignments are received and submitted electronically The Internet provides advanced research capabilities and valuable language resources, such as specialized dictionaries and glossaries

The services of . . . translators are needed in a number of subject areas. While these workers may not completely specialize in a particular field or industry, many do focus on one area of expertise . . . including business

The foregoing description in the *Handbook* closely accords with the duties of the proffered position, as described by the beneficiary. The AAO determines that the proffered position is that of a translator.

With respect to the educational requirements of a translator, the *Handbook* states as follows:

The educational backgrounds of . . . translators vary Although it is not necessary to have been raised bilingual to succeed, many . . . translators grew up speaking two languages

Beyond high school, there are many educational options. Although a bachelor's degree is almost always required . . . 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 nonuniversity 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 . . .

Id. at 263. As the foregoing information makes clear, a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into a translating position. Though a baccalaureate degree is generally required, it need not be in a specific field. Moreover, the specialized training required to develop translating skills may be obtained in a variety of non-university, non-degree programs. Thus, a translator does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Though the petitioner asserts that the position also incorporates the duties of a securities analyst, the AAO does not agree. Securities analysts are included in the *Handbook's* occupational category of financial analysts and personal financial advisors. As described in the *Handbook, id.*, at 80-81:

Financial analysts and personal financial advisors provide analysis and guidance to businesses and individuals to help them with their investment decisions. Both types of specialist gather financial information, analyze it, and make recommendations to their clients. However, their job duties differ because of the type of investment information they provide and the clients they work for. *Financial analysts* assess the economic performance of companies and industries for firms and institutions with money to invest. *Personal financial advisors* generally assess the financial needs of individuals, providing them a wide range of options.

Financial analysts, also called *securities analysts* and *investment analysts*, work for banks, insurance companies, mutual and pension funds, securities, firms, and other businesses, helping these companies or their clients make investment decisions. Financial analysts read company financial statements and analyze commodity prices sales, costs, expenses, and tax rates in order to determine a company's value and project future earnings. They often meet with company officials to gain a better insight into a company's prospects and to determine the company's managerial effectiveness. Usually, financial analysts study an entire industry, assessing current trends in business practices, products, and industry competition. They must keep abreast of new regulations or policies that may affect the industry, as well as monitor the economy to determine its effect on earnings.

Financial analysts use spreadsheet and statistical software packages to analyze financial data, spot trends, and develop forecasts. On the basis of their results, they write reports and make presentations, usually making recommendations to buy or sell a particular investment or security. Senior analysts may actually make the decision to buy or sell for the company or client if they are the ones responsible for managing the assets. Other analysts use the data to measure the financial risks associated with making a particular investment decision

The foregoing job duties are not reflected in the proffered position. Seventy percent of the beneficiary's time, according to the petitioner, would be spent exclusively on translating foreign-language documents into English. As for the remaining thirty percent of the job, only five percent involves the "research and analysis of investment opportunities" and the duties described by the petitioner do not include the kind of in-depth financial analysis performed by securities and investment analysts. There is no indication that the beneficiary would be using spreadsheet and statistical software packages or writing reports with investment recommendations. Nor is there any evidence of who the petitioner's clients are, whether they are businesses, individuals, or other entities, and what types of investment opportunities are likely to be targeted.

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are dispositive, not the title of the position. The petitioner must show that the performance demands of the position require a baccalaureate or higher degree in a specific

specialty. The critical issue is not the employer's self-imposed standard, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in the specific specialty as a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000). Based on the evidence of record, the AAO is not persuaded that the beneficiary would be performing any duties of a securities analyst in the proffered position. The duties of the position are clearly those of a translator, an occupation that does not normally require a baccalaureate or higher degree in a specific specialty.

For the reasons discussed above, the AAO determines that the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because the record does not establish that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into the position.

With regard to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner asserts that the nineteen job postings it has submitted on appeal show that a baccalaureate degree is the common educational requirement for translators. Most of the advertisements from private industry, however, simply state that a bachelor's degree is required, without identifying a specific specialty. The postings from federal and local government entities do state that a bachelor's degree in languages, linguistics, translation, or a related specialty is required. These public sector entities are not in the same line of work as the petitioner, however, and bear no resemblance to the petitioner in their size and scale of operations. Thus, the internet job announcements are not persuasive evidence that a baccalaureate degree in a specific specialty is the common requirement for translators in the petitioner's industry among organizations similar to the petitioner. Accordingly, the proffered position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the record show that the proffered position is so complex or unique that it can only be performed by an individual with a baccalaureate degree in a specific specialty, as required for it to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Neither the technical nature of the subject matter nor the languages of the material to be translated exceed the scope of a typical translating position. A translator may encounter a range of different subject matters, as indicated in the *Handbook*, and the three European languages required by the proffered position, though they may be in different language families, do not require a specialty degree to master. Achieving competence as a translator, as explained in the *Handbook*, does not require a baccalaureate or higher degree in translation or a related specialty. It can also be the product of a non-university training program.

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a baccalaureate degree in a specific specialty or its equivalent, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. Though the petitioner asserts that the subject

matter of the translations – *i.e.*, financial documentation – requires specialized knowledge at the level of a master’s degree in translation/applied linguistics, the AAO is not persuaded that the subject matter is more specialized and complex than materials typically encountered by translators, which can cover a range of different subject areas, as indicated in the *Handbook*. Based on the evidence of record, the AAO concludes that the duties of the translator position proffered by the petitioner could be performed by an individual with less than baccalaureate level knowledge in a specific specialty.

For the reasons discussed above, the record fails to demonstrate that the proffered position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

Beyond the decision of the director, the AAO also determines that the record fails to establish that the beneficiary is qualified to perform services in a specialty occupation. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) provides that an alien must meet one of the following criteria to qualify to perform the services of a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary does not meet criteria (1) and (3) above, and there is no documentation showing that she meets criterion (4). As for criterion (2), the record indicates that the beneficiary received a diploma as a professional translator (“Diplom-Uebersetzerin”) from a university in Germany. But there is no documentary evidence demonstrating that this diploma is equivalent to a baccalaureate or higher degree in a specialty field from a U.S. college or university, as required for it to qualify the beneficiary to perform services in a specialty occupation. As the beneficiary is not qualified to perform services in a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(C), the petition must be denied on this basis as well.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director’s decision denying the petition.

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