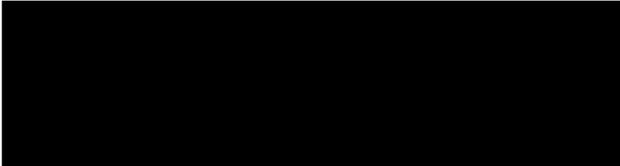


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02

MAR 15 2007

FILE: WAC 05 107 54571 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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the service center 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 wireless products retailer that seeks to employ the beneficiary as a management trainee/administrative assistant. 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 the proffered position is not a specialty occupation. The petitioner submits a timely appeal.¹

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.

¹ Although the submitted Form G-28 indicates that [REDACTED] is the attorney or representative of the petitioner, the AAO notes that [REDACTED] does not qualify as an authorized representative under the regulation at 8 C.F.R. § 292(a)(2)(iii).

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 denial letter; and (3) the 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 management trainee/administrative assistant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's support letter. According to this evidence, the beneficiary would perform duties that entail: assisting the contract marketing consulting firm in collecting data about local consumer behavior to identify cellular phone products and services; working with the petitioner's managers or under the supervision of the market research analyst to design a more comprehensive survey to determine customers' demands for different types of cell phones and monthly plans; working under the supervision of the market research analyst to prepare bilingual reports that evaluate consumer psychology and buying behavior, and the relationship between buying habits and differences in age and ethnicity from survey and study data; developing marketing and promotional campaigns based on consumer behavior studies and surveys that were conducted and analyzed by the marketing firm; assisting the contract employment counselor in designing and preparing employee manuals for employment training and consulting purposes and evaluation forms for evaluating employee performance; assisting executives in organizing and drafting bilingual product brochures, commercials, sales plans, and product promotions; and rewriting advertising and promotional materials. The petitioner asserts that it requires a baccalaureate degree in psychology, communications, or economics for the proposed position.

The director stated that the proposed position involves working under the supervision of a contracted marketing consulting firm and an employment counselor. Most of the duties described in the record, the director states, are carried out by contracted personnel. The director found that the beneficiary will perform administrative assistant and routine translation duties, which he determined do not establish the proffered position as a specialty occupation.

On appeal, the petitioner submits contractual agreements to establish that the beneficiary will perform the proposed part-time position for three years and board minutes to show a relationship with Soniya Technology International, Inc., and the need to employ a communications specialist. The petitioner states that the beneficiary will perform writing and translating duties, which the AAO has previously found to be specialty occupation duties. The petitioner states that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reflects that the occupation of writer and editor requires a bachelor's degree. The petitioner points to the *Handbook's* information regarding interpreter and localization translators to establish that the beneficiary's translator duties are those of a specialty occupation, and the petitioner further states that the *Handbook* reveals that "careers in technology and communication" also include language/communication specialist and technical copywriter.

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 first considers 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 2006-2007 edition of 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

On appeal, the petitioner states that the beneficiary will assist in promoting the new technology of Soniya Technology International Inc. by rewriting current advertisements and providing localization of promotional materials (including creation of technical documents including above-captioned family safety system and uDSP.) The petitioner states that the goal of the beneficiary's translation is:

[F]or the product (including above-captioned Family [L]ink Systems) to appear as if it were originally manufactured in the country where it will be sold.

The AAO observes that the duty of creating technical documents was not previously described in the petitioner's March 7, 2005 letter, which had depicted the beneficiary's translation duties as:

[Assisting the] executive in organize [sic] and drafting [a] bilingual product brochure, commercial, sales plan, [and] product promotions such as rebates and giveaways. [Rewriting] [the] company[']s current advertising and promotional materials by using his psychology background in both Chinese and English.

On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a specialty occupation. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The duty of creating technical documents, the AAO finds, would materially alter the beneficiary's job responsibilities as the

language used by the petitioner implies that the beneficiary would be required to perform as a localization translator, a specific and highly technical specialization in the field of translation. The *Handbook's* information about translators describes localization translation as involving the complete adaptation of a product for use in a different language and culture. Given that this specialized duty was not previously described in the petitioner's March 7, 2005 letter, the AAO will not consider it as part of the proposed job description.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of occupations. The AAO finds that the beneficiary's duties primarily involve assisting a market or marketing research analyst and providing translation. The *Handbook* describes a market or marketing research analyst as follows:

Market, or marketing, research analysts are concerned with the potential sales of a product or service. Gathering statistical data on competitors and examining prices, sales, and methods of marketing and distribution, they analyze data on past sales to predict future sales. Market research analysts devise methods and procedures for obtaining the data they need. Often, they design telephone, mail, or Internet surveys to assess consumer preferences. They conduct some surveys as personal interviews, going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers usually conduct the surveys under the market research analyst's direction.

After compiling and evaluating the data, market research analysts make recommendations to their client or employer on the basis of their findings. They provide a company's management with information needed to make decisions on the promotion, distribution, design, and pricing of products or services. The information also may be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying the company's operations. Market research analysts also might develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

According to the *Handbook*, a market or marketing research analyst is not generally required to possess a baccalaureate degree in a specific academic specialty. The petitioner's March 7, 2005 letter describes the beneficiary as performing duties under the supervision of a market research analyst or as assisting the market research analyst. However, the AAO finds that there is no evidence in the record establishing that the petitioner has retained a contract marketing firm or a market research analyst that the beneficiary is to be supervised by or assist. The submitted contractor agreements carry little evidentiary value as they are proposals that have not been signed by all parties. Thus, the petitioner has not provided evidence establishing that the beneficiary will perform market or marketing research analyst duties that require a baccalaureate degree in a specific academic field. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The *Handbook* describes a translator as an occupation that involves converting:

[W]ritten materials from one language into another. They must have excellent writing and analytical ability. And because the documents that they translate must be as flawless as possible, they also need good editing skills.

...

Localization translators constitute a relatively recent and rapidly expanding specialty. Localization involves the complete adaptation of a product for use in a different language and culture. At its earlier stages, this work dealt primarily with software localization, but the specialty has expanded to include the adaptation of Internet sites and products in manufacturing and other business sectors.

Translators working in localization need a solid grasp of the languages to be translated, a thorough understanding of technical concepts and vocabulary, and a high degree of knowledge about the intended target audience or users of the product. The goal of these specialists is for the product to appear as if it were originally manufactured in the country where it will be sold and supported. Because software often is involved, it is not uncommon for people who work in this area of translation to have a strong background in computer science or computer-related work experience.

The *Handbook* also indicates that translators are not required to possess a baccalaureate degree in a specific academic discipline. It states:

The educational backgrounds of interpreters and translators vary. Knowing a language in addition to a native language is essential. Although it is not necessary to have been raised bilingual to succeed, many interpreters and translators grew up speaking two languages.

In high school, students can prepare for these careers by taking a broad range of courses that include English writing and comprehension, foreign languages, and basic computer proficiency. Other helpful pursuits include spending time abroad, engaging in comparable forms of direct contact with foreign cultures, and reading extensively on a variety of subjects in English and at least one other language.

Beyond high school, there are many educational options. Although a bachelor's degree is often 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 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, while those working in the community as court or medical interpreters or translators are more likely to complete job-specific training programs.

The petitioner states that the beneficiary would assist in organizing and drafting bilingual product brochures, commercials, sales plans, and product promotions such as rebates and giveaways, and would rewrite the company’s advertising and promotional materials. As described by the petitioner, the proposed duties would not require a person to possess extensive writing and comprehension skills and an in-depth understanding of vocabulary or concepts in a technical area such as computer science, localization, science, law, engineering, or finance. Instead, the documents that are to be drafted, product brochures, commercials, and rebates and giveaways, seem intended to target the general consumer and would thereby require common words and phrases. No evidence in the record suggests that the sales plan would require extensive knowledge or writing or comprehension skills in a technical area.

The record contains a document entitled “Pathways to Careers in Communication” by the National Communication Association. This document discusses the communications field in a general manner, and it states that colleges and universities offer majors in communications. Nonetheless, this statement does not signify that employers normally require a bachelor’s degree for a job in communications. Nor does the document specifically address the educational requirements of the proposed position.

Based on the evidence of record and the *Handbook’s* information, the beneficiary’s marketing research and translation duties do not demonstrate employment that would normally not require a baccalaureate degree in a specific academic field. Thus, the petitioner fails to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submits job advertisements to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO finds that the job advertisements and their associated documents are not persuasive, however. The petitioner submitted job postings from Soniya Technology International, Inc.; a letter from ██████████ of Soniya Technology International, Inc., dated March 8, 2005, which states that she is the company’s communication specialist; the H-1B approval notice issued to Soniya Technology International, Inc. and reflecting ██████████ as the beneficiary; and the document entitled “Executive Summary,” that indicates that Soniya Technology International, Inc. develops technology products such as its patent-pending uDSP™ and DSE technologies. The petitioner is a wireless products retailer with 15 employees, not a developer of technology; consequently, Soniya Technology International, Inc. differs in nature from the petitioner. The posting by Edutainment Media, Inc. does not describe the nature of Edutainment Media, Inc.; for this reason, the AAO cannot determine whether it is a similar enterprise to the petitioner. The ATX Communications’ posting reveals that it is a communications company that is publicly traded; it does not however, offer sufficient information to establish it as a similar organization to the petitioner. In addition, the duties of the ATX Communications’ position are not parallel to those of the offered position; the beneficiary will not handle customer service issues, the major aspect of the ATX

Communications job. Gerdau Ameristell, a steel producer, is also dissimilar in nature from the petitioner. For these reasons the job advertisements do not prevail in establishing that a specific degree requirement is common to the industry in parallel positions among organizations that are similar to the petitioner.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. As described by the petitioner, the beneficiary's translator duties entail drafting bilingual product brochures, commercials, and product promotions; and rewriting advertising and promotional materials. On appeal, the petitioner submits documents that it labels as "Sample of the cell phone materials needs [sic] translation work." The documents that are in the English language are written by Nokia and Sony Ericsson Mobile Communications AB and seem to instruct on the use and specifications of the cell phone. Collectively, the documents that would be translated by the beneficiary, as described by the petitioner, target the general public, and would not require a thorough understanding of concepts and vocabulary in a technical area such as computer science, science, engineering, finance, law, or localization. Instead, the documents would involve the translation of common words and phrases. The *Handbook* conveys that translators usually do not require a baccalaureate degree in a specific specialty. The AAO finds that the petitioner has not explained the relevance of the submitted Motorola booklets concerning the operation of the mobile telephone and personal communicator and the technical information sheets from other cell phone providers as the petitioner has not established that the beneficiary will translate this type of document. The submitted contractor agreements carry little evidentiary value as they are proposals that have not been signed by all parties. For the reasons stated here, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position. At the time of filing, the petitioner stated that the proffered position is newly created. Accordingly, it has no hiring history regarding the offered position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. As described by the petitioner, the beneficiary's translator duties entail drafting bilingual product brochures, commercials, and product promotions; and rewriting advertising and promotional materials. On appeal, the petitioner submits documents that it labels as "Sample of the cell phone materials needs [sic] translation work." The documents that are in the English language are written by Nokia and Sony Ericsson Mobile Communications AB and seem to instruct on the use and specifications of the cell phone. Collectively, the documents that would be translated by the beneficiary target the general public, and would not require a thorough understanding of concepts and vocabulary in a technical area such as computer science, science, engineering, finance, law, or localization, as the documents would involve common words and phrases. As previously stated, the petitioner does not explain the relevance of the Motorola booklets and the technical information sheets as the petitioner does not indicate that the beneficiary would translate this type of document. The submitted contractor agreements carry little evidential value as they are unsigned proposals. Furthermore, the *Handbook* reports that translators normally do not require a baccalaureate degree in a specific specialty. According to the

petitioner, the beneficiary would assist a market research analyst; the *Handbook* indicates that a market research analyst does not require a bachelor's degree in a specific field. Accordingly, no evidence of record demonstrates that the proposed duties have a specialization or complexity that would require the services of a person with a baccalaureate degree in a specific specialty. The petitioner therefore fails to establish the criterion at 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 on this ground.

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.