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U.S. Citizenship
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IN RE: Petitioner:
Beneficiary:



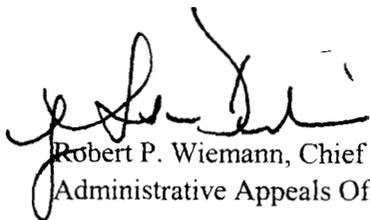
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is an international consulting company. It seeks to employ the beneficiary as an interpreter/translator. Accordingly, 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).

On September 4, 2007 the director denied the petition, determining that the record did not establish that the proffered position qualified as a specialty occupation. On appeal, counsel asserts that the petitioner has satisfied the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), and 8 C.F.R. § 214.2(h)(4)(iii)(A)(4); thus has established that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 filed April 2, 2007 and supporting documentation; (2) the director's August 6, 2007 request for additional evidence (RFE); (3) counsel for the petitioner's August 21, 2007 response to the director's RFE and supporting documentation; (4) the director's September 4, 2007 denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue in this matter 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 petitioner is seeking the beneficiary's services as an interpreter/translator. In a March 29, 2007 letter appended to the petition, the petitioner stated:

As a translator, [the beneficiary] will be responsible for the translation or interpretation of written or oral language text into another language. She will also proofread, edit, and revise translated materials assigned to [her].

The petitioner also provided a detailed summary of the job position and the terms of the beneficiary's employment. In part, the petitioner indicated that the beneficiary would work on behalf of its client, Middle East Broadcasting Networks, Inc., (MBN) performing simultaneous interpretation for live programs, including simultaneously translating, adapting, and originating news and news-related dialog for TV and radio under intense time pressure with accuracy, speed, and intelligence. The petitioner also provided the resumes of three individuals who are or were currently employed by the petitioner as translators for MBN. The petitioner noted that these three individuals held bachelor's degrees.

In response to the director's RFE, counsel for the petitioner provided a copy of the contract between the petitioner and MBN, dated October 1, 2006 and its statement of work describing the position and the principal place the work would be performed. Upon review of the evidence submitted, the director determined that the petitioner had not established that the proffered position is a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

When determining whether a particular job qualifies as a specialty occupation, CIS does not only rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the

alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, 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 the minimum for entry into the occupation, as required by the Act.

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. 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 *Handbook* reports:

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 in order to accurately convert information from one language, known as the source language, into another, the target language. In addition, they must be sensitive to the cultures associated with their languages of expertise.

* * *

Interpreters convert one spoken language into another—or, in the case of sign-language interpreters, between spoken communication and sign language. This requires interpreters to pay attention carefully, understand what is communicated in both languages, and express thoughts and ideas clearly. Strong research and analytical skills, mental dexterity, and an exceptional memory also are important.

* * *

Translators convert written 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.

* * *

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, such as colloquialisms, slang, and other expressions that do not translate literally. Some subjects may be more difficult than others to translate because words or passages may have multiple meanings that make several translations possible. Not surprisingly, translated work often goes through multiple revisions before final text is submitted.

The *Handbook* reports: that the educational backgrounds of interpreters and translators vary, but most have a bachelor's degree; in high school, students prepare for these careers by taking a broad range of courses that include English writing and comprehension, foreign languages, and basic computer proficiency; beyond high school, there are many educational options and "[a]lthough 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." The AAO observes that, if a bachelor's degree or its equivalent in a variety of disciplines is the minimum entry requirement, then the job is not a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Section 214(i)(1) of the Act, 8 U.S.C. §1184(i)(1). Moreover, although specialized training may be required, the *Handbook* indicates: "[a] number of formal programs in interpreting and translation are available at colleges nationwide and through non-university training programs, conferences, and courses." Based on the *Handbook's* statements, a baccalaureate or higher degree or its equivalent in a specific specialty is not the normal minimum requirement for entry into a position of an interpreter or translator. The petitioner has, accordingly, failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of the proffered position pursuant to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. Factors often considered by CIS when determining the industry standard include: 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)).

The petitioner has not attempted to establish the proffered position as a specialty occupation under the first prong of this criterion. It has submitted no job postings from similar organizations to establish a degree requirement as the norm within its consulting industry. Neither has it provided evidence in the form of letters or affidavits from other firms or individuals in the industry. The record, accordingly, fails to establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree could perform the work associated with the position. The petitioner, in this matter, has not attempted to establish the second prong of this criterion. The AAO observes that for reasons similar to those detailed in the AAO's discussion of the fourth criterion, the petitioner has established that the proffered position would involve duties distinguishable and more complex and unique from similar, but non-degreed employment as a translator/interpreter. The petitioner has established the second prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not provided adequate evidence to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The AAO acknowledges the submission of three resumes of individuals who also held or currently hold a translator/interpreter position with the petitioner. However, the petitioner has not provided copies of these individuals' diplomas and evaluations of any of their foreign degrees as equivalent to a bachelor's degree awarded by a United States accredited college or university. 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)). Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. When assessing whether the petitioner has met its burden with regard to this criterion, the AAO considers the duties of the position, not the occupation, or the industry-wide standard associated with the occupation. In the instant matter, the nature of the specific duties described by the petitioner in its job summary coupled with the nature of the organization for which the beneficiary would be performing interpreting and translating services, establishes that the proffered position requires skill and knowledge beyond that of a typical interpreter/translator. The inherent complexities of simultaneously interpreting news reports and broadcasts for overseas consumption and the intensity and demand of high-level translation includes sufficiently specialized and complex elements that the knowledge to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. Accordingly, the petitioner has established that the position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO has reviewed the beneficiary's two diplomas, transcripts, and the evaluation assessing her education to be the equivalent of a Bachelor of Arts degree in Linguistics and Translation and a Master of Arts degree in Conference Interpretation (Arabic/French/English) and finds that the beneficiary is qualified to perform the duties of the specialty occupation.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.