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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
425 I Street, N.W.
Washington, DC 20536

File: WAC 02 202 50608 Office: CALIFORNIA SERVICE CENTER Date: JAN 0 6 2004

IN RE: Petitioner [redacted]
Beneficia[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:

[redacted]

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R.§ 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a website developer and translator of documents with three employees and a gross annual income of $200,000. It seeks to employ the beneficiary as a translator/technical writer. The director determined that the petitioner had not shown that the proffered position of translator/technical writer requires a bachelor's degree in a specific specialty. On appeal, counsel submits a short statement of reasons for the appeal.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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

Section 214(i)(1) of the Immigration and Nationality Act(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:

> an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In the initial petition, the job duties of the proffered position were described thusly:

> [The beneficiary] will be responsible for our most sophisticated translation and writing projects, including corporate financial statements, securities reports, sales and budget reports, and financial proposals and agreements that often involve multi-million dollar projects. She will also be involved in translation assignments in international litigation and other legal matters; accounting reports; the translation of regulatory and legal requirements from Japan and the United States; patent application; and banking, securities and insurance agreements.

The petitioner stated that a baccalaureate degree in foreign culture (English) or a related discipline is the minimum requirement for entry into the proffered position. The initial petition also included the beneficiary's academic records.

The director found the evidence insufficient upon which to base a decision; thus, on June 12, 2002, he requested further evidence to demonstrate that the proffered position was a specialty occupation. In response, the petitioner submitted a letter which essentially restated the job duties listed in the original petition. The director found the evidence unpersuasive and denied the petition on July 23, 2002.

On appeal, counsel asserts that, because the proposed duties are complex, the proffered position should be considered a specialty occupation. The record does not contain any specific documentation to support this claim, however. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Turning to the Department of Labor's *Occupational Outlook Handbook (Handbook)* for guidance, it is found that the proposed job duties described above are comparable to those of a translator. The 2002-2003 edition of the *Handbook* states that the type of training required to work as a translator consists mainly of long-term, on-the-job experience. It is not necessary to obtain a bachelor's degree in a specific specialty in order to enter into the field of translation.

Because the petitioner includes the phrase "technical writer" in the proffered job title, and as it appears that the beneficiary would be responsible for translating technical material, the *Handbook's* description of the position of technical writer is also useful in this analysis. The *Handbook* states on page 146 that a college degree is generally required for a position as a writer, and while some employers hire individuals with a liberal arts background, most prefer employees with degrees in communications, journalism, or English.

The *Handbook* notes that technical writing requires a degree in, or some knowledge about, a specialized field, such as one of the sciences. However, good writers can often learn the required specialized knowledge on the job. In other cases, technical personnel without an educational background in writing can become technical writers after developing their writing skills while still employed in technical positions. Inasmuch as the *Handbook* does not indicate that a bachelor's degree in a specific specialty is a requirement to become either a translator or a technical writer, the proffered position is not a specialty occupation. The petitioner has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has failed to establish that a bachelor's degree in a specific specialty is a requirement common to the industry in parallel positions among similar organizations. The petitioner has not placed on the record any evidence to the effect that its particular position is so complex or unique that it can be performed only by an individual with a degree. The evidence does not meet the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Regarding 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) and (4), the record does not contain documentation regarding the petitioner's educational requirements for other translator/technical writers in its organization, nor is there any information on the record with regard to the specialized and complex nature of the proffered position. The job description in the original petition contains work duties that are similar to any technical translator position. The evidence does not meet either of these two criteria.

The petitioner has failed to establish that any of the four criteria enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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. Accordingly, the appeal will be dismissed.

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