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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

FILE: SRC 02 215 53509 OFFICE: TEXAS SERVICE CENTER DATE: JAN 20 2004

IN RE: Petitioner: [redacted]
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 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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a management and consulting firm that currently employs one person and has a gross annual income of $130,000. It seeks to employ the beneficiary as a technical translator for a period of three years. The director denied the petition for failing to establish that the proffered position was a specialty occupation.

On appeal, the petitioner submits a short statement.

The Form I-129 listed the proffered position as "Technical Translator."

Among the documents submitted with the Form I-129 was a "Scope of Services" document, which stated:

> [The beneficiary's] services include Translation from English to Japanese, and English to Japanese of oral and/or written documentation in general and technical [sic] such as Ringis, Standards, Engineering Memos, etc. Assisting Japanese and English Speaking Staff to communicate with one another in business transactions, such as, initial badge request to have access to the plant for Japanese Visitors, etc. Medical Assistance in translation such as visits to Industrial Health Services or nearby Hospitals for the Job related injuries or sickness for Japanese Visitors or Coordinators if translation is needed. Assisting in general affairs for Japanese Coordinators upon their requests for the need for Translation. Provide Technical on-site translation for training and/or workshops provided by Japanese Trainers and/or vendors.

Also accompanying the Form I-129 was a letter of support from the petitioner's CEO and V.P. for Translation. According to the letter, the petitioner's primary client is a Japanese car manufacturing company that employs the petitioner for management consulting and translation service for the company's U.S. operations. The letter identifies the current job site as a car manufacturing plant in Kentucky with 7,000 U.S. workers. At present, there is a great amount of work to be done in English to Japanese and Japanese to English translation of documents, including manuals, procedures, and standards. The letter also states that the petitioner wishes to employ the beneficiary as a technical translator because of his bilingual abilities and his "Business Oriented Skills and Experiences."

The director issued a request for additional evidence, which asserted that the evidence so far presented did not establish that the proffered position was a specialty occupation. The petitioner's C.E.O. and V.P. for Translation responded with a letter addressing the director's requests for specific types of evidence on the specialty occupation issue. The letter stated, in part, that the proffered position "requires the theoretical and practical application of the following skills":

- Ability to know and apply business concepts to effectively translate documentation between Japanese and English, and vice versa.
- Utilize technology in producing quality deliverables so that the message is not lost in the presentation media.
- Facilitate understanding between American and Japanese management personnel by effectively translating the meaning of documents and verbal communications while reducing the 'noise' of cultural divergences.
- Ability to translate technical documentation/specifications from Japanese to English.

The letter also presented a list of "exact duties" that were more technically precise, including "Desk Translation," "Engineering Informational Memos," "Presentation Documents for Management Level Personnel," "Ringi Translation," "Verbal Translation," "Off-Site Translation Duties," and "Miscellaneous Translation."

Desk translation duties require translation "from Japanese to English, or vice-versa "by using Japanese OS System Windows into software applications such as Microsoft PowerPoint, Microsoft Excel, Microsoft Word, and I-Grip (drawing software from Japan)."

The engineering memo function requires translation of Japanese Engineering Change Instructions for safety issues in accordance with ANSI and OSHA requirements. It also requires translation of "cycle time issues, ergonomic issues, standards of equipment or machinery and their operating procedures, and other engineering operating issues."

The presentation of documents for management requires the translation of both English and Japanese presentation materials. Typically, this aspect of the position would involve translation of "Japanese PowerPoint's [sic] that require translation for American management personnel to allow them to present the concepts in English."

"Ringi" translation involves translating the draft of an idea as it circulates among the proper parties, for approval without a meeting. It will be required primarily for budget approval on requests from American engineers and Japanese coordinators.

Verbal translation would be required at "ad hoc meetings, periodic maintenance meetings, informational and training meetings, equipment use and operations meetings, and installation status meetings."

Offsite translation involves assistance with "the translation/communication needs of Japanese coordinators and their spouses and dependents in working with local and/or state government offices, such as the local IRS office (for obtaining ITIN numbers), the DMV (for obtaining an [sic] valid state driver's license)[, the] local law enforcement office for accidents and traffic violations, emergency medical assistance, speaking with insurance companies for claims, etc."

Miscellaneous translation "requires the technical translator to be available for translating other interactions as deemed necessary by supervisors, including translating Japanese phone correspondences [sic] with Japanese Vendors and Assisting Japanese visitors with Plant Safety Orientation."

The letter also expresses the petitioner's contention that the proffered position requires a bachelor's degree in business administration. In part, the letter states that the technical translator must be able to perform research quickly, have proven experience in assimilating information and synthesizing key points, have a strong sense of Japanese and American business cultures, and understand Japanese and American business theory and application.

Section 214(i)(1) of the Immigration and Nationality 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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

It is worth emphasizing that "degree" as used in each of the four criteria at 8 C.F.R. § 241.2(h)(4)(iii)(A) means one in a "specific specialty," that is, in a discipline associated with a body of highly specialized knowledge that is necessary for performance of the proffered position. *See* section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(iii)(A). *See also Tapis International v. INS,* 94 F. Supp. 2d 172, 175 (D. Mass. 2000).

As the following discussion will show, the evidence does not satisfy any of the H-1B specialty occupation criteria of 8 C.F.R. § 241.2(h)(4)(iii)(A).

I. Baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the particular position. -8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

The evidence of record does not establish the proffered position as one that would normally require a baccalaureate or higher degree, or the equivalent, in any specific specialty that is directly related to the proffered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its authoritative information about particular occupations' duties and educational requirements. Here the AAO consulted the 2002-2003 edition, but found no occupation that substantially comports with the proposed duties outlined by the petitioner.

The evidence of record does establish that a bachelor's degree or higher in business would be helpful in terms of providing a general business orientation that would enhance translating skills. However, the record does not establish that the proposed duties require highly specialized knowledge in any business area. Likewise, based on the proffered position's overall depiction in the record, it is not evident that business experience, training, or coursework short of a bachelor's degree would not sufficiently equip an applicant with the general type of business understanding that the position would require.

In addition, the bilingual, English-Japanese fluency required for the proffered position can be achieved by means other than a bachelor's degree or its equivalent in either or both languages.

II. Degree requirement that is common to the industry in parallel positions among similar organizations, or, alternatively, a particular position so complex or unique that it can be performed only by an individual with a degree.
-8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

A. Degree requirement common to the industry.

Factors often considered by CIS when determining the industry standard include: whether 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." *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The petitioner provided no documentary evidence on this issue, and, as mentioned above, the *Handbook* presents no information relevant to the educational requirements for the particular position at issue here.

B. Degree necessitated by the complexity or uniqueness of the position.

The record fails to establish that the proffered position is more complex or unique than what should be expected from translating positions in general. Translating from Japanese to English and

English to Japanese does not vest the position with any particular complexity or uniqueness. The business context in which much of the translation will occur does not add a qualitatively more complex or unique dimension. The business understanding that the petitioner desires in order to enhance the ease and accuracy of its employees' translations is consistent with the general knowledge of a specific subject area that any translating firm specializing in that area would expect from its translators.

The director was correct in not granting the petition under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

III. Degree or its equivalent as the employer's normal requirement for the position.
-8 C.F.R. § 214.2 (h)(4)(iii)(A)(3).

The petitioner indicated that this is the first time that it has offered the technical translator position. Therefore, the director had no basis for granting the petition under 8 C.F.R. § 214.2(h)(4)(iii)(A) (3).

IV. Specific duties of a nature so specialized and complex as to require knowledge usually associated with a baccalaureate or higher degree.-8 C.F.R. § 214.2 (h)(4)(iii)(A)(4).

The AAO has considered all the petitioner's comments on the Form I-290B, Notice of Appeal. The AAO understands that the petitioner believes that the position requires someone with a minimum of a bachelor's degree in business administration in order to satisfy the customer's need for "someone with a greater understanding of business theory/practices in order to facilitate accurate and efficient meetings and translation of business related correspondence." The AAO also notes the petitioner's contention that, especially as described in the response to the request for additional evidence, the proposed duties "require the skills of a highly educated professional to ensure accurate performance." The AAO has also considered the petitioner's statement that "inaccurate performance may literally result in the injury or death of workers and consumers."

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). As the petitioner's comments on the proposed duties are not evidence, Citizenship and Immigration Service (CIS) considers them only to the extent that the evidence substantiates them.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a bachelor's degree or

higher in a specific specialty. In reaching this determination, the AAO has considered the entire record, including, but not limited to, all the petitioner's general and technically detailed descriptions of the proposed duties.

The proffered position's computer literacy requirements are not on a level that is usually associated with a degree in computers or informational technology, despite the petitioner's comment that the position requires "in depth" computer knowledge.

To the extent that they are described in the record, the desk translation, document presentation, and Ringi translation duties do not appear to require highly specialized knowledge that is usually associated with a bachelor's degree or higher in a specific specialty.

The petitioner asserts that the position requires business skills and the knowledge and application of business concepts. However, the record does not identify the particular business knowledge, concepts, and applications that the position requires. The AAO will not speculate upon matters that the record does not quantify. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361, *supra*.

The translation duties for various meetings ("Verbal" translation), for Japanese Coordinators and their relatives ("Off-site" translations), and for miscellaneous circumstances identified by supervisors do not appear any more complex or unique than what one would expect in translation positions in general that do not require a specialized degree.

The totality of the evidence presented by the petitioner indicates that the proffered position can be performed by a person who is fluent in English and Japanese, is able to use a relatively small number of specific computer programs, and has some understanding of business. A degree in a specific specialty is not a necessity. The evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussions above, the petitioner has failed to establish any one of the four specialty occupation criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

Again, 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.