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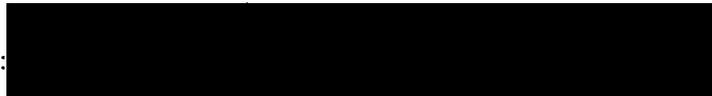
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FILE: SRC 04 030 51110 Office: TEXAS SERVICE CENTER Date: JUN 12 2006

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director 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 start-up translation services firm that seeks to employ the beneficiary as a chief translator. The petitioner, therefore, endeavors to extend the beneficiary's classification 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 basis of her determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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:

[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.

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 proposed position.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

In its November 4, 2003 letter of support, the petitioner stated that the duties of the proposed position would include performing professional translations from English into Russian, Georgian, and German, and from Russian, Georgian, and German into English. This would involve knowledge of various technical terminologies in these languages, such as legal, business, and technical terminologies. The beneficiary would also oversee other translators and employees of the petitioner.

On appeal, counsel contends that the director erred in denying the petition. Counsel contends that the proposed position qualifies for classification as a specialty occupation.

In determining whether a proposed 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. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The 2006-2007 edition of the *Handbook* sets forth the following information regarding the duties of translators:

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, 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* offers the following information regarding the educational qualifications required for entry into this field:

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.

Accordingly, the proposed position cannot be considered a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). The fact that a degree is “often required” does not rise to the “normally required” standard imposed by the regulation. Moreover, since a degree in a wide range of fields is acceptable as a minimum requirement for entry into the occupation, the petitioner cannot establish that its proposed position requires the beneficiary to hold a baccalaureate or higher degree, or its equivalent, in a specific specialty. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As noted previously, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. As such, the petitioner has not established its proposed position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO does not find persuasive the information submitted by counsel from the Department of Labor's *Dictionary of Occupational Titles (DOT)*. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. Its assessment (the SVP rating) is meant only to indicate the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and does not specify the particular type of degree, if any, that a position would require. As such, the AAO accords no weight to this information.

Nor does the proposed position qualify as a specialty occupation under either alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The AAO has reviewed the job postings submitted by counsel in response to the director's request for additional evidence. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among organizations similar to the petitioner. The petitioner must also establish that the degree commonly required is in a specific specialty.

There is no evidence in the record to establish that any of the job postings are from companies similar in size and scope of operations to the petitioner, a startup translation services firm with one apparent employee. 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 Department of Justice is a government agency, SAIC is a government contractor, Princess House is a direct selling company, Lexicon Marketing (USA), Inc. develops and markets educational materials, the University of Michigan Hospitals is a healthcare provider, and the European Police Office is a law-enforcement agency of the European Union.

No information was submitted regarding the Comprehensive Technologies, Inc. or the unnamed nonprofit organization in Virginia Beach, Virginia. No information was submitted regarding DSM Research, although the AAO notes that the position appears to be located in the Netherlands. The AAO is presented with no basis to conclude that any of these companies are “similar” to the petitioner.

Moreover, these postings do not confirm that a bachelor’s degree requirement is an industry standard. For example, the Department of Justice will accept two to four years of experience in formal translation in lieu of a degree. The postings from SAIC and the University of Michigan¹ do not state that a bachelor’s degree is required, but rather that it is “preferred.” However, employer preferences are not synonymous with employer requirements, and do not satisfy the regulation.

While the postings from Princess House, Comprehensive Technologies, Inc., and the unnamed nonprofit organization do require a bachelor’s degree, they do not require that the degree be in any particular field.

Thus, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the position is so complex or unique that it can only be performed by an individual with a degree. It finds no evidence that would support such a finding, as the position proposed in the petition is similar to the translator position described in the *Handbook*, which does not require a degree in a specific field.

Accordingly, the petitioner has not established its proposed position as a specialty occupation under either alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires the petitioner to demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner’s ability to meet the third criterion, the AAO normally reviews the petitioner’s past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees’ diplomas.

The evidence submitted by the petitioner does not satisfy the third criterion, as it does not establish that it normally requires a degree in a specific specialty for the position. The petitioner has submitted evidence that one of its translators possess a bachelor’s degree in technology from an institution in Kazakhstan.²

¹ The posting from the University of Michigan Hospitals goes on to state the following: “While there are no formal education requirements many of the staff interpreters have at least a bachelor’s. . . .”

² The AAO notes that there has been no demonstration that this degree is equivalent to a bachelor’s degree from a United States institution of higher education.

According to an evaluation of his foreign education, the beneficiary possesses the equivalent of a bachelor's degree, as well as a master's degree, in "foreign languages teacher education." This evidence does not support a finding that the petitioner normally requires a degree in a specific specialty for the position. Rather, it appears that a degree in any field will suffice.

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

A review of the duties of the proposed position does not lead to a conclusion that they would require the beneficiary to have a higher degree of knowledge and skill than that normally expected of translators in other, similar organizations. Therefore, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. There is no information in the record to support a finding that the proposed position is more specialized and complex than the translator positions for which the *Handbook* indicates no requirement for the highly specialized knowledge associated with at least a bachelor's degree in a specific specialty. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO decisions cited by counsel in his response to the director's request for evidence are not persuasive. In the first decision, the AAO sustained the petitioner's appeal because it found the proposed position to be in fact that of a technical writer requiring highly specialized knowledge in a specialty. Such is not the case here. In the second decision, the AAO sustained the petitioner's appeal because it found the duties of the proposed position so complex that they required an individual with a degree to perform them. As noted *supra*, such a demonstration has, again, not been made here.

The documents submitted by counsel on appeal do not establish that the proposed position qualifies for classification as a specialty occupation, either. The University of Georgia report and the article from the September 1984 issue of the *Association of Departments of Foreign Language Bulletin* do not address any of the criteria at issue on appeal, nor do they address the duties of the specific position proposed in this petition. Rather, they discuss general duties and challenges of translators. They are thus of little evidentiary value.

The September 20, 2001 article from the *Baltimore Sun* and March 6, 2002 article from GovExec.com addresses a shortage of translators in the United States. However, whether the industry is experiencing a shortage of translators or is underserved is not relevant to this proceeding. To qualify its proposed position as a specialty occupation, the petitioner must establish one of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Neither of these articles address these criteria and are therefore also of little evidentiary value.

The AAO next turns to the two cases cited by counsel on appeal. Counsel first cites *Augat v. Tabor*, 719 F. Supp. 1158 (D.Mass. 1989), and states that "[i]t should first be noted that the requirement of a bachelor's degree is not absolute." Counsel's citation is misplaced. *Augat* did not involve an H-1B petition; it involved a third-preference immigrant visa petition. The regulations regarding H-1B classification are set forth at pages 2-3 of this decision. Again, the petitioner must establish one of these criteria in order for the petition to be approved. It has not done so.

Counsel also cites *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988), where the Board of Immigration Appeals stated that a claim to eligibility focuses first on the tasks, demands, and actual

requirements of the position. The AAO agrees with this assessment, and has reviewed the tasks, demands, and actual requirements of the proposed position. The AAO has reviewed the entire record in order to determine whether the petitioner has demonstrated that the proposed position meets any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has failed to do this.

Finally, the record does not support counsel's assertion that a bachelor's degree is the "first of many steps in becoming a translator." The *Handbook* contradicts this assertion, and many of the job postings that counsel has himself submitted also contradict this assertion.

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the director was correct to deny the petition. Accordingly, the AAO will not disturb the director's denial of the petition. As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial.³

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.

³ Although the AAO will not address the qualifications of the beneficiary in detail, it does note that his membership in the American Translators Association was granted in 2004, a date subsequent to the filing of this petition. According to counsel's November 4, 2003 letter of support, such membership is a requirement for the position. Therefore, the beneficiary was not qualified for the proposed position on the date the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).