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U.S. Citizenship
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JUN 15 2005



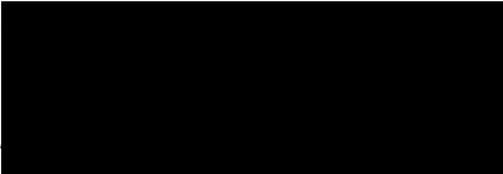
FILE: WAC 04 024 51984 Office: CALIFORNIA SERVICE CENTER Date:

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:



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, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a film production business that seeks to employ the beneficiary as a cross-cultural communications consultant and translator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not 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.

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 proffered position.

The record of proceeding before the AAO contains: (1) 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) 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 cross-cultural communications consultant and translator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 28, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: assisting in the negotiations in various Asian countries for producing films; advising staff on the economies, politics, law, and culture of various Asian nations; interpreting for the petitioner's staff during communications with officials, business, and political and cultural leaders; and translating correspondence and financial and legal documents. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in political science, international relations, or an equivalent thereof.

The director found that the proffered position was not a specialty occupation because the petitioner had not demonstrated that there is a bona fide position that can be considered a specialty occupation. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part:

The Petitioner submitted evidence that establishes that it is a small production company which specializes in action-oriented, martial arts movies made in various counties of Asia, grosses over \$9 million per year, employs five individuals at the corporate office in Los Angeles, California, is owned by [REDACTED] well-known actor who also stars in its films, also establishes that it has a specific and credible need for a Cross Cultural Communications Consultant/Translator, which is a specialty occupation. Included in this evidence were documentation from publications regarding the films that were made overseas as well as published material about the Steamroller Productions and the owner and CEO, actor Steven Seagal. . . .

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the director that the proffered position is primarily that of a social scientist, a position that is primarily found in: Federal, State, and local governments; educational institutions; social assistance agencies; scientific research and development firms; management, scientific, and technical consulting firms; architectural, engineering, and related firms; civic and social associations; museums; and business, professional, labor, political, and similar organizations. Rather, the proffered position is primarily that of an interpreter/translator. At page 262 of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, under the Interpreters and Translators job description, the DOL states, in part:

The services of interpreters and translators are needed in a number of areas. While these workers may not completely specialize in a particular field or industry, many do focus on one area of expertise. Some of the most common areas are discussed below; however, interpreters and translators also may work in a variety of other areas, including business, social services, or entertainment.

Information in the *Handbook* indicates that the educational backgrounds of interpreters and translators vary, but a bachelor's degree is almost always required. It is noted that not all interpreter and translator positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the proposed duties are of such complexity as to require a baccalaureate

degree in a specialized and related area. It is noted that the beneficiary holds a bachelor's degree in international relations conferred by a Mongolian institution. An evaluation from a company that specializes in evaluating academic credentials finds that the beneficiary's foreign bachelor's degree is the equivalent of a bachelor's degree in international relations from a regionally accredited academic institution in the United States. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the 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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.