



U.S. Citizenship
and Immigration
Services

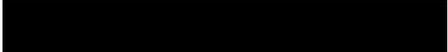
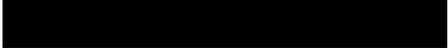
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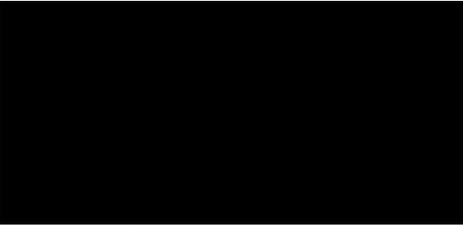


FILE: WAC 04 082 50734 Office: CALIFORNIA SERVICE CENTER Date: **SEP 02 2005**

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 director of the service center 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 provides over-the-phone interpretation service. It seeks to employ the beneficiary as an interpreter/translator. The petitioner, therefore, 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).

The director denied the petition on the ground that the proffered position is not a specialty occupation, and the beneficiary is not qualified for the position. On appeal, counsel submits a brief and additional evidence.

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 an interpreter/translator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to counsel's March 29, 2004 letter the beneficiary would perform duties that entail conducting over-the-phone translation and interpretation services for governmental organizations, emergency medical personnel, businesses, financial services, the health care industry, insurance companies, law enforcement, promotion materials, advertising, court and legal documents, public services, and transportation; and handling administrative matters. Counsel's January 23, 2004 letter stated that the proffered position requires a bachelor's or master's degree in languages.

According to the director, a translator might qualify as a specialty occupation if it involves translating highly technical documents in a particular specialty occupation and requires knowledge in that occupation. The director denied the petition finding that the proposed position did not have complexity beyond what is normally encountered in the occupation. No evidence, the director stated, establishes that the proposed position requires baccalaureate-level study in a specialty occupation such as medicine, pharmacology, law, technology, or engineering. The director concluded that the beneficiary is not qualified to perform a specialty occupation.

On appeal, counsel states that the director mischaracterized the proposed position as that of a general translator, and erred in concluding that the beneficiary is not qualified to perform a specialty occupation. Counsel refers to prior AAO decisions to demonstrate that the proposed position qualifies as a specialty occupation. Counsel asserts that Mandarin Chinese interpreters and translators typically need to hold an advanced degree in light of their highly specialized and complex duties, and that the petitioner normally requires a bachelor's degree or its equivalent for interpreters and translators, which is commonly required in the industry. Counsel emphasizes that the petitioner's interpreters and translators must pass strict screening tests. Counsel discusses the petitioner's clientele and the duties of a Mandarin Chinese interpreter. Referring to resumes of Mandarin Chinese interpreters currently employed by the petitioner, counsel states that the resumes show the interpreters as possessing master's degrees in linguistics, or translation and interpretation. Counsel declares that Mandarin interpreters provide interpretation for courts, hospitals, technology companies, and Fortune 500 companies; are well-versed in finance, law, medicine, science, and technology; and translate highly technical documents. Counsel discusses the beneficiary's qualifications.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

Counsel asserts that in prior cases the AAO determined that a translator is a specialty occupation. The record contains a labor condition application (LCA) that shows that CIS approved another petition for an interpreter/translator position. This record of proceeding does not, however, contain all of the supporting evidence submitted in the prior case. In the absence of all of the corroborating evidence contained in that

record of proceeding, the AAO cannot determine whether the instant petition is similar to the approved H-1B petition. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook* (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." *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)).

In determining whether a 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 *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* discloses that the proposed duties are a combination of those of a translator and interpreter. The *Handbook* states:

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.

Translators' assignments may vary in length, writing style, and subject matter. When they first receive text to convert into another language, translators usually read it in its entirety to get an idea of the subject. Next, they identify and look up any unfamiliar words. Translators also might do additional reading on the subject matter if they are unclear about anything in the text. However, they also consult with the text's originator or issuing agency to clarify unclear or unfamiliar ideas, words, or acronyms.

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 services of interpreters and translators are needed in a number of subject areas. While these workers may not completely specialize in a particular field or industry, many do focus on one area of expertise. . . .

. . .

Localization translators constitute a relatively recent and rapidly expanding specialty. Localization involves the complete adaptation of a product for use in a different language and culture. At its earlier stages, this work dealt primarily with software localization, but the specialty has expanded to include the adaptation of Internet sites and products in manufacturing and other business sectors.

Translators working in localization need a solid grasp of the languages to be translated, a thorough understanding of technical concepts and vocabulary, and a high degree of knowledge about the intended target audience or users of the product. The goal of these specialists is for the product to appear as if it were originally manufactured in the country where it will be sold and supported. Because software often is involved, it is not uncommon for people who work in this area of translation to have a strong background in computer science or computer-related work experience.

Providing language services to healthcare patients with limited English proficiency is the realm of *medical interpreters and translators*. . . . Translators working in this specialty primarily convert patient materials and informational brochures, issued by hospitals and medical facilities, into the desired language. Medical interpreters need a strong grasp of medical and colloquial terminology in both languages, along with cultural sensitivity regarding how the patient receives the information. They must remain detached but aware of the patient's feelings and pain.

The *Handbook* conveys the following educational requirements of translators and interpreters:

The educational backgrounds of interpreters and translators vary. Knowing a language in addition to a native language is a given. . . .

In high school, students can begin to prepare for these careers by taking a broad range of courses that include English writing and comprehension, foreign languages, and basic

computer proficiency. Other helpful pursuits include spending time abroad, or comparable forms of direct contact with foreign cultures, and extensive reading on a variety of subjects in English and at least one other language.

Beyond high school, there are many educational options. Although a bachelor's degree is almost always 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.

The *Handbook* reports that although a bachelor's degree is almost always required for a translator and interpreter, "it is acceptable to major in something other than a language." A baccalaureate degree in a specific specialty is thus not required for these occupations. Furthermore, no independent evidence shows that the proposed position primarily involves translating or interpreting in highly technical, scientific, or legal areas. Consequently, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The submitted job postings are insufficient to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is that a specific degree requirement is common to the industry in parallel positions among similar organizations, as the employers in the postings - the United Nations, Stanford Hospital and Clinics, and Sun Microsystems - differ in nature from the petitioner, a translation company.

No evidence establishes the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The *Handbook* reveals that the proposed position parallels a translator and interpreter, which are occupations that do not require a bachelor's degree in a specific specialty. No evidence reveals that the proposed duties have such complexity or uniqueness as to require a baccalaureate degree in a specific specialty.

Counsel states that the petitioner establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) as it normally requires a degree or its equivalent for the position. The submitted two resumes are not persuasive as they do not reflect employment with the petitioner. Thus, this evidence fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

To establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) the petitioner must show that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As discussed earlier, the *Handbook* reveals that the proposed duties are a combination of those of an interpreter and translator, which are occupations that do not require a bachelor's degree in a specific specialty. No

independent evidence shows that the proposed duties entail translating or interpreting highly technical, scientific, or legal documents; the proposed duties are not so specialized and complex as to require knowledge associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner, therefore, fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.