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U.S. Citizenship
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FILE: WAC 04 240 50667 Office: CALIFORNIA SERVICE CENTER Date: **APR 03 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:

SELF-REPRESENTED

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.

for *Michael T. Kelly*
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 is an importer and distributor of healthcare products that seeks to employ the beneficiary as a bilingual specialist/translator and to classify her 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 that the proposed position is not a specialty occupation. On appeal, the petitioner 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 bachelor's 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) Form I-129 and supporting documentation; (2) the director's request for further evidence (RFE); (3) the petitioner's response to the RFE; (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 bilingual specialist/translator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the RFE. The petitioner listed the following as the proposed duties with a break down of the percentage of time to be spent on each duty:

- 1) organizing material, such as product introduction, the company's balance sheet and business expansion plan, and revising company information such as the company's introduction, annual report, newsletter, and correspondence in both English and Japanese, according to set standards regarding order, dimension, message speed, weight and function. (20%).
 - conferring with the president and other sales and shipping personnel to define the key points of the translation and writing assignments mentioned above and the contents, such as current health care product market price, features, materials, and origins that need to be covered or promoted.
 - determining the style of writing and specialized terminology in message and health to be used that are appropriate for the assignment.
- 2) revising, writing, editing and translating current company brochures, catalogs, and advertising materials, etc., with proper terminology in Japanese, providing clear information in a simple and easily understood manner (20%).
 - utilizing the obtained specialized information in message and specifications of the products to be presented to Japanese business partners or consumers.
- 3) providing quality translation and foreign documents preparation service as requested by business partners in Japan. (25%).
 - providing assistance to the petitioner's business partners in preparing necessary official documents for the establishment of Japanese-based chain or joint venture to operate or invest overseas, including articles of incorporation, business license, organizational chart, product catalog, bank statement, invoice and so forth.
 - documents requiring translation include but are not limited to official business letters of correspondence, business contracts or agreements, business plans, project proposals, etc.
 - analyzing the information obtained to develop a detailed and easy understanding of articles or writing introductory, advertising, and soliciting materials using appropriate style and technical terminology.
- 4) developing contents for the corporate web site in Japanese. Cooperating with the web page composer and webmaster to create a website containing accurate and clear information, in a bilingual format, for the petitioner's service (20%).

- assisting in the construction of the petitioner's corporate website on the Internet. Cooperating with the web page composer to create a web site containing accurate and clear information on the petitioner's services and products.
 - preparing articles and product descriptions in Japanese to be used on the website, making sure that all writing materials to be used on the website are accurate and information given is correct.
 - ensuring the company materials written in Japanese mentioned above conform to Japanese reading habits and are consistent with Japanese culture, tradition, and systems.
- 5) Assisting in writing and technical translating of market reports on health care products, market analyses, market summaries, market trends, in Japanese newspapers, magazines, professional journals, programs in the field of health for Japanese radio and television in Southern California (15%)
- cooperating with senior salespeople and providing industry information for Japanese media including radio, television, newspaper and magazines in the Southern California area. Making analysis to current change of market trends, and introducing new products.
- 6) Other assigned duties.

The petitioner states that the beneficiary must have a bachelor's degree in Japanese and knowledge of the health industry.

The director determined that the record lacked a reliable evidentiary basis to establish that the petitioner's proposed position was authentic because it is not common for businesses of any size to hire in-house translators, let alone a business of the petitioner's size. The director found that it was even less likely that the petitioner would need the services of the beneficiary since it already employed an in-house translator. The director further found that no evidence established that the proposed position is a specialty occupation. According to the director, the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reveals that, while translator positions generally require bachelor's level training, they do not require a degree in a specific specialty. The director found that the petitioner failed to establish any of the specialty occupation criteria.

On appeal, the petitioner states that the beneficiary will be the only in-house translator working for the petitioner because its other translator no longer works there. The petitioner asserts that the position is a combination technical writer/localization translator and submits samples of translated work, a company profile, a customer list, and other evidence of doing business.

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 proposed position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a bachelor's 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 *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)).

To determine whether or not 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 bachelor's 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. Based on the petitioner's job description and a thorough review of the *Handbook*, the AAO finds that the duties of the proposed position most resemble those of a translator. According to the *Handbook*, translators convert written materials, which may vary in length, writing style, and subject matter, from one language into another. Translators also might do additional research on the subject matter if they are unclear about anything in the text. Specifically the *Handbook* states the following about the duties employers assign to translators:

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.

Most of the proposed duties, such as "organizing material in English and Japanese," "revising, writing, editing and translating current company brochures, catalogs, and advertising materials" and "providing clear information in a simple and easily understood manner," are common translator duties. The other duties appear to be incidental editorial duties related to the translation position, such as "cooperating with the web page composer and webmaster to create a website containing accurate and clear information, in a bilingual format," and "assisting in writing and technical translating of market reports on health care products."

The AAO disagrees with the petitioner's assertion that the proposed position is a combination of duties of a localization translator and a technical writer. The *Handbook* discusses the occupation of localization translators, which constitutes a relatively recent and rapidly expanding specialty. The *Handbook* states:

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.

Given that the beneficiary will translate many different types of documents, including product descriptions, market reports, newspapers, and magazines, and that the proposed position does not require a master's degree, it differs from a localization translator as that occupation is described in the *Handbook*.

The proposed duties do not include the duties performed by technical writers, as described in the *Handbook*. According to the *Handbook*, technical writers prepare operating and maintenance manuals, catalogs, parts lists, assembly instructions, sales promotion materials, and project proposals. They often work with engineers on technical subject matters to prepare written interpretations of engineering and design specifications and other information for a general readership. Therefore, the AAO finds that the duties are those of a translator and that they do not combine the duties of a translator and a technical writer.

Thus, the petitioner has failed to establish that the position is one that qualifies as a specialty occupation under the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) - a bachelor's or higher degree or its equivalent, in a specific field of study is normally the minimum requirement for entry into the particular position.

There is no evidence in the record to establish the first alternative prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner asserts that the AAO has already determined that a bilingual specialist is a specialty occupation and refers to a 1994 AAO decision and submits copies of several petitions for similar positions that were approved. If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d).

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence shows the proposed position is so complex or unique that it can be performed only by an individual with a degree. The *Handbook* discloses that translation jobs do not require individuals with specific bachelor's degrees to perform them.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - that the petitioner normally requires a degree or its equivalent for the position. To determine whether a petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their

names, dates of employment, and copies of their diplomas. In the instant case, the petitioner asserts that it established this criterion by listing a former employee, employed as a translator, on its organizational chart. The petitioner, however, did not submit evidence to establish that this individual held a bachelor's degree in translation or a related field or that she performed duties that rose to the level of a specialty occupation. 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)). Further, one hiring is not sufficient to establish a history of exclusively recruiting and hiring only individuals with at least a bachelor's degree in a specific specialty. Also, the evidence of record does not establish that the petitioner's requiring a specialty degree is necessitated by a level of highly specialized knowledge that must be theoretically and practically applied to perform the job. *See Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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 bachelor's or higher degree. The record contains various documents submitted to support the assertion that the material to be translated is specialized and complex. It is not possible to ascertain which are the original Japanese documents and which are the English translations. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Although some scientific and medical terms appear in the documents, the terminology is not so specialized and complex as to require knowledge that is usually associated with the attainment of a bachelor's or higher degree in a specific field that relates to the particular document. For example, a bachelor's or master's degree in chemistry or a related field is not required in order to properly translate the product information for "Rejuvenal." The *Handbook* states that translators sometimes do additional research on the subject matter if they are unclear about anything in the text. Based on the evidence of record, a bachelor's degree in any field and proficiency in English and Japanese would be sufficient to perform the duties of the proposed position.

As related in the discussion above, the petitioner has failed to establish that the proposed 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.