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U.S. Citizenship  
and Immigration  
Services



MAR 04 2004

FILE: LIN 01 246 55976 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 214(e)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1184(e)(2)

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.

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

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 dismissed. The petition will be denied.

The petitioner is an orthotics and prosthetics laboratory that seeks to employ the beneficiary, a citizen of Mexico, as an orthotic-prosthetic practitioner. The petitioner, therefore, endeavors to classify the beneficiary as a TN-2 alien to perform services as a professional businessperson pursuant to section 214(e)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (e)(2).

The director denied the petition because the proposed position is not found on the list of professions in Appendix 1603.D.1 to Annex 1603 of the North American Free Trade Agreement (NAFTA), and also because the beneficiary does not possess any licenses, degrees, diplomas, or certificates beyond high school.

On appeal, the petitioner asserts that Citizenship and Immigration Services (CIS) should recognize the existence of the proffered position as a "specialty," notwithstanding its absence from the aforementioned list of NAFTA professions. The petitioner also states that the evidence shows that the beneficiary is qualified to perform the duties of a prosthetic and orthotic specialist.

Section 214(e)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1184(e)(2), states:

An alien who is a citizen of Canada or Mexico . . . who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as "NAFTA") to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor. For purposes of this Act, including the issuance of entry documents and the application of subsection (b), such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 101(a)(15) . . . .

Pursuant to 8 C.F.R. § 214.6(b):

*Business activities at a professional level* means those undertakings which require that, for successful completion, the individual has a least a baccalaureate degree or appropriate credentials demonstrating status as a professional in a profession set forth in Appendix 1603.D.1 of the NAFTA.

The beneficiary of this petition is a citizen of Mexico. Pursuant to 8 C.F.R. § 214.6(d)(2), a petition on behalf of a citizen of Mexico seeking classification as a TN professional shall be accompanied by:

- (i) A certification from the Secretary of Labor that the petitioner has filed the appropriate documentation with the Secretary in accordance with section (D)(5)(b) of Annex 1603 of the NAFTA.
- (ii) Evidence that the beneficiary meets the minimum education requirements or alternative credentials requirements of Appendix 1603.D.1 of Annex 1603 of the NAFTA as set forth in § 214.6(c). This documentation may consist of licenses, degrees, diplomas, certificates, or evidence of membership in professional organizations. Degrees, diplomas, or certificates received by the beneficiary from an educational institution not located within Mexico, Canada, or the United States must be accompanied by an evaluation by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. Evidence

of experience should consist of letters from former employers or, if formerly self-employed, business records attesting to such self-employment; and

(iii) A statement from the prospective employer in the United States specifically stating the Appendix 1603.D.1 profession in which the beneficiary will be engaging and a full description of the nature of the duties which the beneficiary will be performing. The statement must set forth licensure requirements for the state or locality of intended employment or, if no license is required, the non-existence of such requirements for the professional activity to be engaged in.

The job description provided by the petitioner corresponds to a position not found in Appendix 1603.D.1 to Annex 1603 of the NAFTA. Neither the statute nor the regulations allow for the consideration of unlisted professions in this nonimmigrant classification. Accordingly, the director's decision was appropriate.

After a careful review of the entire record, it is concluded that the petitioner has not shown that the position meets the requirements for the classification sought, as defined under section 214(e) of the Act.

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 met that burden.

**ORDER:** The appeal is dismissed. The petition is denied.