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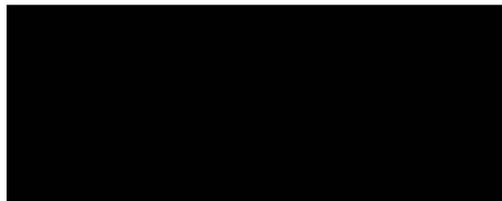
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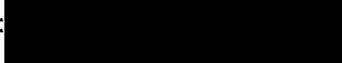
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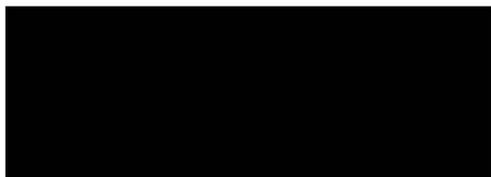


FILE: WAC 04 229 50465 Office: CALIFORNIA SERVICE CENTER Date: **AUG 25 2006**

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 petition will be approved.

The petitioner is a provider of day care and health assistance for adults and seeks to employ the beneficiary as a social worker associate. The petitioner 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 because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

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 are 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) 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a social worker associate. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Assess participants’ needs, establish their eligibility for benefits and services, and help participants to obtain them;
- Provide cultural and social counseling to participants;
- Monitor and keep case records on participants and report progress to supervisors and case managers;
- Organize and lead group activities;
- Help the social worker with participants to master everyday living skills, to teach participants to communicate more effectively, and to get better with others; and
- Provide emotional support and help participants become involved in their own well being in community recreation programs and in other activities.

The petitioner requires a minimum of a bachelor’s degree in social sciences or a related field for entry into the proffered position.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The petitioner is licensed by the State of California to provide day care and health assistance for up to 120 adults. California licensing requirements for the petitioning facility (Licensing and Certification of Health Facilities and Referral Agencies, Title 22, Division 6, Chapter 1 § 78101) defines a “social work assistant” as a person with a bachelor’s degree in the social sciences or related fields who receives

supervision, consultation and in-service training from a social worker. A degree in social sciences is a branch of study that examines society's institutions – their structures, theoretical foundations, evaluation, and interrelation – and how they affect and are affected by human behavior. Instructional programs focus on the systematic study of social systems, social institutions, and social behavior and include study in a wide range of disciplines, such as: anthropology; applied economics; archeology; cartography; criminology; demography and population studies; sociology and geography. The record reflects that the beneficiary would work under the supervision of a licensed social worker. The record establishes that the duties to be performed by the beneficiary are so specialized and complex that knowledge required to perform them is usually associated with attainment of a baccalaureate or higher degree. The proffered position does, therefore, qualify as a specialty occupation. The petitioner has established the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(4).

The final issue to be considered is whether the beneficiary is qualified to perform the duties of the offered position. The director did not comment on this issue as the petition was denied on another ground. The record, however, is sufficient for the AAO to make that determination. The beneficiary's foreign education has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in geography, which is a degree in social sciences, and is directly related to duties of the proffered position. The beneficiary is, therefore, qualified to perform the duties of the offered position.

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.

**ORDER:** The appeal is sustained. The petition is approved.