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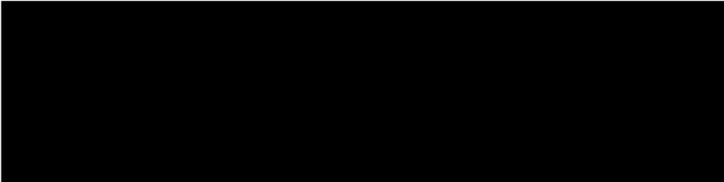
FILE: WAC 03 247 50635 Office: CALIFORNIA SERVICE CENTER Date: MAR 06 2006

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.

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 a medical laboratory that employs laboratory technicians. It seeks to employ the beneficiary as a part-time laboratory manager. 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. On appeal, counsel submits a brief.

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 part-time laboratory manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 2, 2002 letter in support of the petition;

and the petitioner's response to the director's request for evidence. According to the petitioner's president in her July 2, 2002 letter, the beneficiary would perform duties that entail: directing and coordinating the activities of laboratory technicians, including scheduling work hours and assigning duties; ensuring that all laboratory testing results are within the statistical and regulatory guidelines; developing, delegating, and monitoring of and ensuring the timely completion of departmental goals, objectives, and programs; developing and implementing the policies and procedures for documenting, storing, and retrieving information; assuring high standards of internal quality control programs including the maintenance of quality control graphs and charts; preparing the budget and authorizing expenditures; coordinating the purchase of laboratory equipment and supplies; assessing the performance of employees and evaluating the credentials of potential employees; and communicating with the medical doctors of client facilities. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in medical technology for the proffered position.

The director found that the proffered position was not a specialty occupation, because the proposed duties are not so complex as to require a degree in a specific specialty. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. 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, that, as the proffered position is managerial in nature, it falls within the category of a medical and health services manager, as described in the *Handbook*, and is not a clinical laboratory technologist and/or technician. Counsel states further that similar businesses require a bachelor's degree for laboratory managers. Counsel submits job advertisements as supporting documentation.

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.

The AAO turns first to 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 *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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position falls within the category of a medical and health services manager, as described in the *Handbook*. A review of the *Handbook*, 2006-2007 edition, finds that medical and health services managers work primarily in private hospitals, offices of physicians, nursing care facilities, home health care services, federal government health care facilities, ambulatory facilities run by state and local governments, outpatient care centers, insurance carriers, and community care facilities for the elderly. In this case, the petitioner is a medical laboratory that employs

laboratory technicians. The California Business and Professions Code regulates the operation of medical laboratories. The petitioner does not give sufficient information about the type of laboratory it operates to determine whether the position is a specialty occupation. Title 17 California Code of Regulations (CCR) § 1036.1 requires that every clinical laboratory director, under whom high complexity tests or examinations are performed, employ a general supervisor who is subject to licensure and must be qualified under the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. § 263a). A laboratory director of a clinical laboratory performing waived tests may delegate responsibilities for the supervision of the laboratory to a waived laboratory supervisor, who must be listed in § 1206.5 of the California Business and Professions Code. Because the petitioner has not indicated whether it is a medical laboratory performing high complexity tests, moderate complexity tests, or waived tests, it cannot be determined what the educational requirements are for the position. Furthermore, although information on the petition that was signed by the petitioner's president on July 2, 2003, reflects that the petitioner has 59 employees and a gross annual income of \$3.3 million, the record contains no evidence in support of these claims, such as quarterly wage reports and federal income tax returns. 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)). It is also noted that the petitioner has not submitted copies of its 2001 and 2002 federal income taxes, despite the director's March 1, 2004 request. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for laboratory managers. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The advertisements are for laboratory managers at facilities including major hospitals, a community blood bank that provides blood products to six hospitals, and a world leader medical diagnostics laboratory. Furthermore, the petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described in the advertised positions, such as: designing effective experiments, analyzing the results, and making recommendations; overseeing blood component manufacturing at a community blood bank; and planning, directing, and developing laboratory consulting services within the laboratory testing segment of a world leader in medical diagnostics. Thus, the advertisements have no relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. Counsel states in his May 21, 2004 letter that the proffered position is a new position. The petitioner, therefore, has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent,

in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

Beyond the decision of the director, the record does not contain an evaluation of the beneficiary's credentials from a service that specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Further, California law requires licensure for the general supervisor of a medical laboratory. *See*, CCR § 1036.1 and § 1036.3. The record does not reflect that the beneficiary is licensed to perform the services of a supervisor of a medical laboratory. Thus, the record does not establish that the beneficiary is qualified to perform the services of a specialty occupation. For this additional reason, the petition may not be approved.

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.