

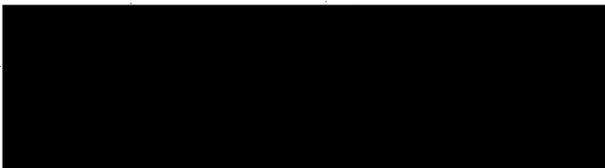


U.S. Department of Justice

Immigration and Naturalization Service

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prevent clearly unwarranted  
invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: LIN-00-104-54230 Office: Nebraska Service Center

Date: DEC 08 2002

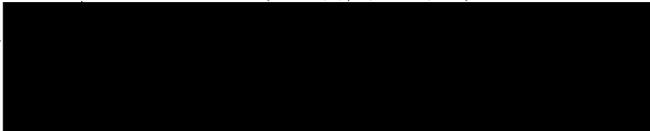
IN RE: Petitioner:  
Beneficiary:



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)

**PUBLIC COPY**

IN BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Handwritten signature of Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further consideration.

The petitioner is a counseling and guidance business with one employee and a gross annual income of \$75,000. It seeks to employ the beneficiary as a caseworker for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a statement. Counsel had indicated that additional evidence would be submitted in support of the appeal on or before January 6, 2001. To date, no additional evidence has been received by this office. Therefore, the record must be considered complete.

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), provides in part for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) as:

an 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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The duties of the proffered position are described in pertinent part as follows:

- \* Counsels clients individually, in family, or in other small groups regarding plans for meeting needs, and aids to mobilize inner capacities and environmental resources to improve social functioning.
- \* Secures information, such as medical, psychological, and social factors contributing to client's situation, and evaluates these clients capacities.
- \* Develops and implements therapeutic treatment plan in clinical setting.
- \* Selects and administers various tests, to identify behavioral or personality traits and intelligence levels, and records results.
- \* Reviews results of tests to evaluate client needs. Plans and administers therapeutic treatment, such as behavior modification and stress management therapy, to assist client in controlling disorders and other problems.
- \* Discusses progress towards goals with client, such as controlling weight, stress, substance abuse.

\* Responsible for monthly client progress reports and completes in a timely manner all reports requested by the agency.

\* Consults with a medical doctor, nutritionist, or other specialists concerning treatment plan and amends plans as directed.

The proffered position appears to be that of a social worker. A review of the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at page 162, finds that the usual requirement for employment as a social worker in health and mental health settings is a master's degree in social work (MSW). In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

The opinion from the academic expert dated June 27, 2000, has been reviewed. The academic expert states, in part, that the proffered position is an entry-level position in the field of counseling and should require a minimum of a bachelor of arts degree in psychology. The expert further lists the beneficiary's proposed duties, in part, as: Ability with supervision to develop and implement therapeutic treatment plan in a clinical setting. The description of duties submitted by the petitioner, however, does not indicate that the proffered position is an entry-level position, nor that the beneficiary would be working with supervision. In addition, the record indicates that the beneficiary has already been performing the above-mentioned duties in a practical training capacity. As such, the petitioner has not demonstrated that the proffered position is an entry-level social worker position requiring less than a master's degree in social work (MSW).

The director has not determined whether the beneficiary qualifies to perform services in a specialty occupation. Accordingly, the matter will be remanded to him to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.