



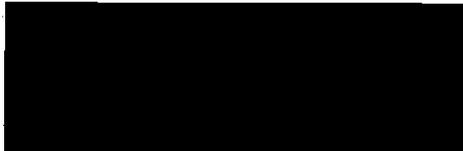
U.S. Department of Justice

Immigration and Naturalization Service

DR

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



File: EAC 00 122 50370

Office: Vermont Service Center

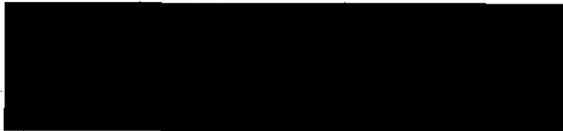
Date: DEC 21 2001

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)

IN BEHALF OF PETITIONER:



Public Copy

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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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 appeal will be dismissed.

The petitioner is a firm that sells medical equipment with 2 employees and a gross annual income of \$425,000. It seeks to employ the beneficiary as a geologist for a period of three years. The beneficiary will be required to test medical equipment. The director determined that the petitioner had not established that the offered position is a specialty occupation or that it constituted a valid job offer.

On appeal, counsel submits a brief and argues that the duties of the position require technical skills.

The regulation at 8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) provides that a petitioner may establish that an occupation is a specialty occupation by submitting evidence showing that:

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) that a petitioner could qualify the offered position as a specialty occupation if the petitioner could establish that:

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 record in this matter reflects that the petitioner is a company that sells medical equipment. The petition is supported by a description of the duties of the position that indicates that

the beneficiary will be required to conduct laboratory tests analysis and experimentation on various substances to determine biochemical and geophysical specifications of substances using medical and geophysical equipment to determine proper functioning. There is also evidence in the record that indicates that the beneficiary requires technical knowledge in order to explain the operations of the medical equipment to potential customers. The beneficiary has the equivalent of a bachelor's degree in geology.

Counsel's arguments on appeal are not persuasive. The record as presently constituted does not establish that the position is a specialty occupation. The record does not establish that an individual who is required to test medical equipment and explain its operation would be required to have a bachelor's degree in any specific field of endeavor. It has not been shown that the duties of this position are so complex that they cannot be successfully performed by an individual with a basic understanding of the technical nature of the equipment. Further, the petitioner has not satisfactorily explained why a firm that sells equipment would require an individual to perform tests on the equipment. As the director noted in his decision, the testing of a piece of equipment would seem to be the responsibility of the manufacturer of the equipment, not the retailer.

Further, the petitioner has not submitted any evidence establishing that it has hired geologists for this position in the past or that the degree requirement is common to the industry in parallel positions among similar occupations.

Assuming for the sake of argument that the duties of the position required the attainment of a bachelor's degree, it has not been demonstrated that the beneficiary's degree in Geology would constitute the appropriate academic training to perform such duties. According to the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2000-2001 edition, geologists use their knowledge of the physical makeup and history of the earth to locate water, mineral, and energy resources, protect the environment, and offer advise on construction and land use projects. The petitioner has not established that there is a nexus between a degree in Geology and the duties of the position.

The Service is not persuaded to classify this position a specialty occupation. Therefore, the director's decision is affirmed.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.