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U.S. Department of Justice  
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536

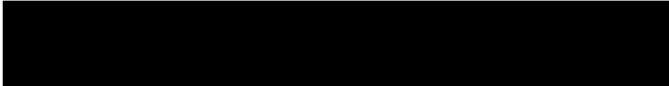


File: WAC-00-017-50064 Office: California Service Center

Date:

JUN 8 2001

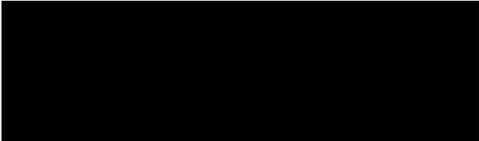
IN RE: Petitioner:  
Beneficiary:



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)

Public Copy

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, Acting 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 medical laboratory with 20 employees and a gross annual income of \$1,358,696. It seeks to employ the beneficiary as a histology technician 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 brief.

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.

The director denied the petition because the duties described by the petitioner, that appeared to relate to the job of a clinical laboratory technologist or technician, were not indicative of a position that would require baccalaureate level training. On appeal, counsel states in part that all of its employees are required to possess a four-year degree. Counsel further states in part that previous petitions for the same/similar positions had been approved by the Service.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary] will function in the specialty occupation of Histology Technician. [The beneficiary] will be engaged in the preparation of slides for microscopic diagnoses. Specifically, she will process specimens, embed tissues, section tissues (blocks) with the aid of a microtome, stain slides (H&E and special stains), and coverslip slides.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position of histology technician is an occupation that would normally require a bachelor's degree in medical technology or a related field. Counsel asserts that the Department of Labor has determined that the proffered position is a specialty occupation. However, a reference in the Department of Labor's [REDACTED] standing alone, is not enough to establish an occupation is a specialty occupation. The [REDACTED] classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the [REDACTED] listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the [REDACTED] does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the Department of Labor in the various editions of the [REDACTED]. The latter publication is given considerable weight (certainly much more than the [REDACTED] in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position is that of a

histology technician. A review of the [REDACTED] 2000-2001 edition, at page 219 finds no requirement of a baccalaureate or higher degree [REDACTED] for employment as a medical or laboratory technician. A medical or laboratory technician generally has an associate's degree from a community or junior college or a certificate from a hospital, vocational, or technical school, or from one of the Armed Forces. In addition, a few technicians learn their skills on the job. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, despite counsel's argument that all of the petitioner's employees hold four-year degrees, the record contains no evidence in support of such claim. It is further noted that the record contains no evidence that the petitioner requires that all of its employees to possess a baccalaureate degree in a specialized area. Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

With respect to counsel's objection to denial of this petition in view of the approval of similar petitions in the past, this Service is not required to approve applications or petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain copies of the previously approved petitions and their supporting documentation. It is, therefore, not possible to determine definitively whether they were approved in error or whether the facts and conditions have changed since their approval.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Beyond the decision of the director, the record does not contain an evaluation of the beneficiary's credentials from a service which specializes in evaluating foreign educational credentials as required by [REDACTED] 2(h)(4)(iii)(D)(3). As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.