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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File: EAC-00-040-51431 Office: Vermont Service Center

Date: JUN 19 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)

identification data deleted to
prevent clearly unwarranted
invasion of personal privacy.

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.

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 office with 21 employees and a gross annual income of \$1.5 million. It seeks to employ the beneficiary as a general manager for a period of two years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner's president submits a statement.

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 petitioner had not demonstrated that the degree requirement is an industry-wide standard or that the beneficiary's proposed duties are so unique and complex as to require a baccalaureate degree in a specialized area. On appeal, the petitioner's president states in part that the beneficiary's proposed duties such as determining the degree of illness, training staff, and speaking foreign languages demonstrate that a baccalaureate degree is required.

The petitioner'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:

- * General Manager with full responsibility of proper functioning and performance of MRI department;

- * Responsible for all hiring and termination of employees within MRI department;

* Responsible for instruction, training and teaching of all MRI technicians;

* Responsible for the proper function and distribution of all trained employees among the various departments of Ocean Open MRI;

* Maintenance of a comprehensive purchase schedule which balances the purchase of new equipment from technologically advanced locations with the purchase of cheaper materials from and radiology related products;

* Responsible for a collaboration between offices of technology and new innovations in radiology practices so that service offered in all locations is maintained at a relative level;

* To research and be aware of new innovations and new existing technologies within the radiology industry so as to keep office on the cutting edge of industry technology, including preparation and analysis of research.

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 the petitioner's argument that the proffered position of general manager would normally require a bachelor's degree in medical radiology or a related field. In these proceedings, the duties of the position are

dispositive and not the job title. The proffered position appears to combine the duties of an office and administrative support manager with those of a radiologic technologist. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 311-312 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as an office and administrative support manager. Most businesses fill administrative and office support supervisory and managerial positions by promoting clerical or administrative support workers within their organizations. In addition, certain personal qualities such as strong teamwork and problem solving skills and a good working knowledge of the organization's computer system are often considered as important as a specific formal academic background.

A review of the Handbook, 2000-2001 edition, at pages 233-234 also finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a radiologic technologist. Preparation for a radiologic technologist position is offered in hospitals, colleges and universities, vocational-technical institutes, and the Armed Forces. Although programs range in length from one to four years and lead to a certificate, associate's degree, or bachelor's degree, the two year associate's degree programs are most prevalent. 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, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as medical radiology, for the offered position. 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.

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.

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.