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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: LIN 99 168 52138

Office: Nebraska Service Center

Date: MAY 11 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: SELF-REPRESENTED

Identification 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
Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an educational institution with no employees which seeks to employ the beneficiary as an "educator/consultant" for a period of three years. The director determined that the petitioner had not adequately responded to a request for additional information including a certified labor condition application from the Department of Labor. The director also determined the petitioner had not established that the offered position is a specialty occupation or that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, the petitioner submits a certified labor condition application and states that the beneficiary has the credentials required to perform work in a specialty occupation.

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.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and

3. Evidence that the alien qualifies to perform services in the specialty occupation.

Although the petitioner was required by regulation and requested by the director to provide a certification from the Department of Labor that a labor condition application had been filed, that document was not initially submitted.

The petitioner has provided a certified labor condition application. Nevertheless, that application was certified on September 22, 1999, a date subsequent to July 16, 1999, the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(i) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. Since this has not occurred, the petition may not be approved.

In a letter dated September 27, 1999, the petitioner stated the following:

Hours per week the beneficiary will work and the weekly salary he will receive-Mr. [REDACTED] has been invited to give courses at teaching sites which [REDACTED] has contracts with in various locations around the US. He is scheduled to teach several times this year usually at 3 and 6 day increments. His usual salary is \$1,100 per day. [REDACTED] currently has 3 contracted employees.

-since we have no other employees except for those who are contracted there are no forms to submit (federal and state tax forms).

Pursuant to 8 C.F.R. 214.2(h)(2)(1)(B) a petition which requires services to be performed at or training to be received in more than one location must include an itinerary with the dates of services and training.

The record clearly shows that the beneficiary will be working at client sites other than the petitioner's corporate address. It is determined that the petitioner has failed to submit a complete itinerary listing the dates and locations where these services will be performed.

The beneficiary received his training in London, England. He passed the International Manipulation exam in 1973. He also served as a national and chief examiner to the Canadian Orthopedic Manual Physiotherapy Specialty between 1978 and 1997. The regulations at 8 C.F.R. 214.2(h)(4)(iv)(C) require that the petition be accompanied by evidence that the beneficiary has a baccalaureate or higher degree or its equivalent in the occupational field in which

he or she will be performing services. 8 C.F.R. 214.2(h)(4)(D)(3) permits an evaluation by a reliable credentials evaluation service which specializes in evaluating educational credentials to be used to substantiate the credentials of a beneficiary. Should the petitioner decide to file a new petition in behalf of the beneficiary, it should be accompanied by such an educational evaluation.

The petitioner has not demonstrated that the offered position is a specialty occupation. Inasmuch as the appeal will be dismissed on other grounds, this issue will not be pursued further at this time.

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.