

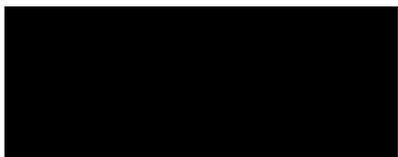


DA

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



MAY 21 2001

File: SRC-98-026-51141

Office: Texas Service Center

Date:

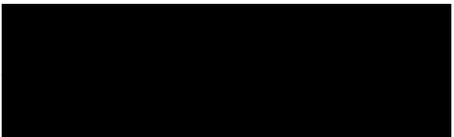
IN RE: Petitioner:  
Beneficiary:



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 business with four employees and a gross annual income of \$480,000. It seeks to employ the beneficiary as a pediatrician for a period of three years. The director determined that the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a brief.

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)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Section 212(j)(2) of the Immigration and Nationality Act (Act) provides, in part, that a graduate of a foreign medical school who is coming to perform services as a member of the medical profession may not be admitted as a member of the medical profession under the H-1B classification unless he or she has passed the Federation licensing examination or an equivalent examination (FLEX) as determined by the Secretary of Health and Human Services.

The director denied the petition because the beneficiary had only passed steps 1 and 2 examinations of the United States Medical Licensing Examinations (USMLE) and part 2 of the Federal Licensing Examination (FLEX). The director further stated that as the beneficiary had not passed all three steps of the USMLE (FLEX equivalency) or both steps of FLEX, she had not met the statutory requirement of passing the FLEX. On appeal, counsel states that the 1998 USMLE at page 8 indicates that passing USMLE 1 and 2, plus FLEX 2 is an examination combination that is acceptable for medical licensure if completed prior to the year 2000.

The record contains the following: a certified labor condition application; a letter from the United States Information Agency recommending that a waiver be granted to the beneficiary; a certificate from the Educational Commission for Foreign Medical Graduates; a Certificate of Graduate Training from the University of Texas Medical School at San Antonio; and the employment agreement between the petitioner and the beneficiary. The record also contains evidence demonstrating that the beneficiary has passed parts of the USMLE and the FLEX.

Pursuant to current Health and Human Service instructions, Parts I, II, and III National Boards of Medical Examiners (NEME) certifying examinations and the steps 1, 2, and 3 examinations of the United States Medical Licensing Examinations (USMLE), are recognized to be equivalent to the FLEX. Such instructions do not provide for any combinations of these three examinations as an equivalency to the FLEX. As such, combinations of these three examinations may not be used to meet the statutory requirement that the beneficiary must have passed the FLEX. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation.

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.