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U.S. Department of Justice

Immigration and Naturalization Service

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



File: EAC-01-250-51140 Office: Vermont Service Center

Date: **DEC 16 2002**

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:



**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is an acupuncture services business with five employees and a gross annual income of \$1,750,000. It seeks to employ the beneficiary as an acupuncturist 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 and additional documentation.

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.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h) (4) (ii) 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.

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.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The specific job duties of the position require that [the beneficiary] apply his specialized knowledge and practical experience in medicine, oriental medicine and acupuncture to review patient's medical history and physical findings to ascertain symptoms, diagnose disorders to be treated, prescribe herbal medicine and/or treatment methods for the given disorders and administer treatment, especially treatment through acupuncture. He is required to apply knowledge of medicine, acupuncture points and their functions to treat various diseases, which include but [are] not limited to headache, hair loss, toothache, kidney stone, urinary incontinence, skin rashes, arthritis, back pain, amnesia, stress syndrome, hypertension, fatigue, infertility, indigestion, hepatitis, diarrhea[,] anemia[,] common cold, and chest pain. Dr. Wang is expected to perform the above outlined job duties independently, competently and without supervision.

In a letter dated December 17, 2001, an academic expert states, in part, as follows:

To my best knowledge, to become an acupuncturist one must learn first the basic principles of medicine and then acupoints in a human body and their functions in treating various diseases as well as other healing arts. Acquiring this body of knowledge requires years of classroom learning at the college level. Typically, a

college of Traditional Chinese Medicine in China provides programs of at least five-year education and clinic training. While in the United States, there are a number of oriental medicine colleges offering education at a master degree level (some are starting to offer doctor degree education) in oriental medicine and acupuncture. As acupuncture becomes more and more an accepted alternative medical treatment, the profession has become standardized in terms of the level of education received by the practitioners.

I believe that a bachelor degree['] in college level education of oriental medicine or acupuncture has become a typical minimum requirement for an acupuncturist who should be able to practice the healing arts competently and independently.

It is noted that not all acupuncturist positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this case, the petitioner will be working independently and without the supervision of a physician. The beneficiary will prescribe herbal medicine for disorders he has diagnosed, as well as administering acupuncture treatment. In view of the foregoing, it is concluded that the specific duties of the proffered position are of such complexity as to require a baccalaureate degree in the specific specialty of oriental medicine or acupuncture. Accordingly, the petitioner has demonstrated that the proffered 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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved.