



U.S. Department of Justice

Immigration and Naturalization Service

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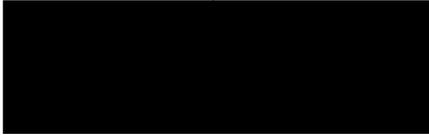
File: EAC-01-188-52855 Office: Vermont Service Center

Date: DEC 27 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:



**identifying data deleted to
prevent unwarranted
invasion of personal privacy**

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. A subsequent motion to reopen and reconsider was granted and the previous decision of the director was affirmed. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a chiropractic health care facility with three employees and a gross annual income of \$150,000. The petitioner seeks to extend its authorization 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.

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.

The record shows that the beneficiary was awarded a Bachelor of Arts degree in Sociology by the University of Oregon on August 31, 1990. The beneficiary subsequently enrolled at the New England School of Acupuncture in the fall of 1994 and was awarded a diploma in Chinese Medicine on May 10, 1997. The beneficiary is both registered and licensed to practice acupuncture in the State of Massachusetts by the Committee on Acupuncture, Board of Registration in Medicine of the Commonwealth of Massachusetts. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position.

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.

The director determined that the petitioner had not shown that a baccalaureate degree in acupuncture or its equivalent is the normal requirement for entry into the occupation.

On appeal, counsel asserts that the Commonwealth of Massachusetts requires the equivalent of a bachelor's degree in acupuncture for licensure as an acupuncturist. In support of his statement, counsel submits the regulation governing the licensure of acupuncturists in the Commonwealth of Massachusetts.

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

[The beneficiary] is being offered temporary employment in the position of Licensed Acupuncturist. In this capacity, [the beneficiary] will generally administer specific therapeutic treatment of symptoms and disorders amenable to Acupuncture and Oriental Medicine procedures. More specifically, he will review the patient's medical history, physical findings and physician's diagnosis to ascertain symptoms or disorders to be treated; administer acupuncture treatment, when necessary, after examination and interview with the patient, and confer with treating physicians as necessary.

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 record contains a document listing the requirements for a full acupuncture license in Massachusetts as of the year 2001. According to this document, an applicant for full licensure must have completed two full years of undergraduate study (60 semester hours or 90 quarter hours or the equivalent) at an accredited college or university or foreign institution which the Committee on Acupuncture deems the equivalent. The applicant must also have completed, at an acupuncture college or at a Committee on Acupuncture approved acupuncture school, a three semester hour course in general biology, human physiology, and human anatomy. Additionally, the applicant must have completed a minimum of 1,350 hours of clinical and didactic instruction in acupuncture related courses, of which a minimum of 100 hours must be in the supervised

diagnosis and treatment of patients for whom the applicant is solely responsible, in a school approved by the Committee on Acupuncture.

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 has shown that the Commonwealth of Massachusetts requires the equivalent of a bachelor's degree in acupuncture for licensure as an acupuncturist. 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.