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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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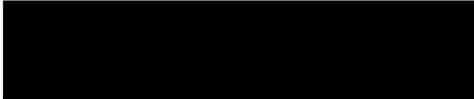


Public Copy

File: EAC 00 225 51807 Office: VERMONT SERVICE CENTER

Date: 15 FEB 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: SELF-REPRESENTED

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, Director
Administrative Appeals Office

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

The petitioner is a firm that provides acupuncture therapy that has no employees and a projected gross income of \$50,000. It seeks to employ the beneficiary as a chief acupuncturist for a period of five years. The director denied the petition finding that the petitioner had failed to establish that the position qualified as a specialty occupation.

On appeal, the petitioner submits a brief.

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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) provides that a petitioner can qualify the offered position as a specialty occupation if the petitioner can establish that:

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 petition is supported by a description of the duties of the

position that indicates that the beneficiary will be responsible for, among other things, providing diagnosis on internal and external illness, for providing appropriate treatments utilizing alternative health therapy, for providing health care consultation services, and assisting in Tai-Chi training. The beneficiary will also be responsible for managing the office, coordinating and managing Sino-American cultural activities and for establishing and executing company marketing plans.

The director denied the petition finding that the petitioner had not established that the position required the services of an individual with a bachelor's degree in a specific academic specialty. The director relied heavily on the licensure requirements for the state of Massachusetts that indicates that an acupuncturist does not require a bachelor's degree to obtain a state license to practice in the state.

On appeal, the petitioner argues that the director's decision did not take into account the uniqueness, broadness, complexity and nature of the duties of the position. The petitioner also argues that the director failed to recognize the petitioner's requirement for a specified degree in physical education and/or business as well as additional training or experience in acupuncture. Finally, the petitioner argues that the director erred in interpreting the state licensure educational requirements for the position.

The record of proceeding has been carefully considered. The petitioner has not established that the proffered position qualifies as a specialty occupation. The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding.

The record does not contain sufficient evidence establishing that a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The only objective evidence contained in the record is information from the state licensure board that clearly indicates that a bachelor's degree is not required to obtain a license to practice the occupation in the state of Massachusetts. An applicant for a state license is merely required to have completed two full years of undergraduate study as well as a three semester hour course in general biology, human physiology and human anatomy.

Further, 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 for the proffered position. In addition, it has not been shown that firms of similar size and scope require such individuals in parallel position. The petitioner has not submitted any evidence relating to the hiring practices of firms of similar size and scope. Finally, the record does not contain evidence establishing that the duties of the proffered position are so complex that knowledge required to

perform the duties is usually associated with the attainment of a baccalaureate degree. As indicated above, in the state of intended employment, an individual with two years of undergraduate training can perform the duties of this position.

In closing, it must be noted that the petitioner has done nothing more than assert for the record that the position is a specialty occupation. The petitioner has not submitted any objective evidence in support of the appeal.

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.