



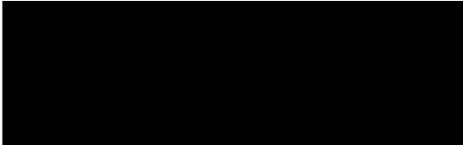
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U.S. Department of Justice

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: LIN-01-193-53015 Office: Nebraska Service Center

Date: **OCT 31 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:

SELF-REPRESENTED

**PUBLIC COPY**

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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a funeral home and mortuary with 20 employees and a gross annual income of \$1.6 million. It seeks to employ the beneficiary as a funeral director/embalmer for an indefinite period. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a statement and supporting 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 the classification of qualified nonimmigrant 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 the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) 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.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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 denied the petition because the position of funeral director/embalmer does not qualify as a specialty occupation within the meaning of the regulations in that such position requires only a 2-year degree.

On appeal, the petitioner's president asserts that the duties of

the proffered position require the theoretical and practical application of a body of highly specialized knowledge. The petitioner further states that funeral homes in Washington State are chronically short-staffed and are having great difficulty finding qualified individuals to fill funeral director and embalmer positions.

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

Care and preparation of dead human bodies for final disposition.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

A review of the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 59 finds no requirement of a baccalaureate degree in a specialized area for positions as funeral directors or embalmers. Funeral directors must be licensed in all but one State, Colorado. Embalmers must be licensed in all States, and some States issue a single license for both funeral directors and embalmers. The petitioner has previously submitted a document setting forth the licensing requirements for funeral directors and embalmers in the State of Washington. According to this document, funeral directors and embalmers must have obtained an associate of art's degree in mortuary science or have completed a course of instruction of not less than 60 semester or 90 quarter at an accredited school,

college, or university. Since most colleges and universities require completion of 120 semester hours for a bachelor's degree, the State of Washington clearly does not require the equivalent of a bachelor's degree for licensure as a funeral director or embalmer.

This document further states that licensing applicants who hold licenses issued by other states do not have to provide college transcripts or National Board Scores for licensure in the State of Washington if they have at least five years of active licensed experience in another state. The petitioner highlighted the above statement in an apparent attempt to show that out-of-state licensing applicants must show that they have the equivalent of a bachelor's degree in mortuary science. However, it appears that the transcripts referred to above relate to the required two-year associate's degree or 60 semester hours of mortuary science course work at a school, college, or university. Thus, the petitioner has not shown that a baccalaureate degree in mortuary science or a related field is normally the minimum requirement for entry into the occupation.

The petitioner has not submitted any evidence to show that the requirement of a bachelor's degree in mortuary science or a related field is standard to the funeral home industry in the State of Washington for parallel positions in similar organizations.

Additionally, the petitioner has not shown that it normally requires a bachelor's degree in mortuary science or its equivalent as part of the hiring process for the proffered position.

Finally, the petitioner has not shown that the duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in a specialized area. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate in the Handbook that a bachelor's degree in a specialized area such as mortuary science is the minimum requirement for positions as funeral directors/embalmers.

The petitioner's president states that funeral homes in the State of Washington have a difficult time locating qualified funeral directors/embalmers and submits various documents in support of his statement. Nevertheless, the Service cannot remedy that situation by approving petitions for H-1B funeral director/embalmer positions where the petitioner has not shown that the position meets the statutory definition of a "specialty occupation." The fact remains that the petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation

within the meaning of the regulations. See 8 C.F.R. 214.2(h)(4)(ii).

Beyond the director's decision, it is noted that the LCA submitted by the petitioner was certified on June 28, 2001, a date subsequent to June 6, 2001, the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) 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. As this has not occurred, the petition may not be approved.

There is a final issue in this proceeding. Matter of Lee, 18 I&N Dec. 96 (Reg. Comm. 1981), found a beneficiary who has been offered a position for an indefinite period with no specified termination date has not been offered a temporary position and does not qualify for classification pursuant to section 101(a)(15)(H)(i). In this case, the beneficiary has been offered a permanent position. As such, he is ineligible for the nonimmigrant classification sought.

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.