

PUBLIC COPY

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

Identifying data deleted to
prevent clear, unwarranted
invasion of personal privacy

122

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, DC 20536



File: SRC 02 023 53521 Office: TEXAS SERVICE CENTER Date: 4/30/03
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)

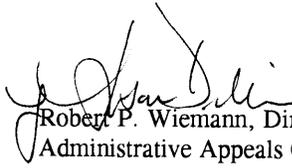
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an individual who owns an insurance agency with a gross annual income of \$270,000. She seeks to temporarily employ the beneficiary as a physical therapist aide for her disabled sister for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation or that the beneficiary was qualified for the position.

On appeal, the petitioner asserts that the beneficiary has made a dramatic difference in her sister's life and is the only person who is able to handle her. In later filings, the petitioner asserts that an individual she had hired to help with the visa application [REDACTED] had misled and defrauded her by not filing a brief on the appeal. She further states that she learned that [REDACTED] should have filed for an EB3 visa rather than an H1B visa for the beneficiary.¹

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further 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 field 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.

¹ The Bureau notes that Mr. [REDACTED] was found murdered several months after the Form I-290B, Notice of Appeal, was filed. The petitioner has no access to her documents that Mr. [REDACTED] maintained in his office. The FBI and the Bureau are assisting in the investigation of the murder.

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 primary issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation.

In the Request for Evidence issued by the Texas Service Center on January 30, 2002, the Director requested: "[E]vidence that the position requires a baccalaureate or higher degree. Submit evidence that the applicant has a baccalaureate degree in the intended filed [sic] of employment."

The petitioner filed a response on April 5, 2002, which stated at Exhibit 2:

The position offered does not require a baccalaureate degree. The position requires experience and hands on training. It is dealing with a child suffering with mental disability and this alone requires specialized individual training and proper knowledge and patience to be able to provide this individual with the highest needed care she deserves.

At Exhibit 3, the petitioner responded: "The position as Physical Therapy Assistant could only be achieved with an associate's degree, despite all her experience and training she could only receive an associate's due to the lack of such advancement in that particular field prohibiting her from receiving an equivalency of a baccalaureate degree."

The information provided clearly negates the possibility that the beneficiary could meet the first, second or third criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A). With regard to the final criterion, namely that 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 description provided by the petitioner of the beneficiary's work duties does not document that the duties of the proffered position are any more specialized or complex than the duties of any other physical therapist aide. A variety of duties were listed in the position description supplied by the petitioner, including:

Encourage [REDACTED] to get out of bed in the morning; Brush her teeth; comb her hair; Get her dressed. . . . Provide entertainment for [REDACTED] i.e., showing her how to play with educational toys, assisting her with writing in her book, watching TV with her and encouraging her to talk. . . . Coach [REDACTED] in changing her shoes . . . Encouraging her in trying to wear a different jacket, instead of the same one every day. She will not let anyone wash the jacket without screaming and crying until it is given back to her.

In the appeal, the petitioner states that her sister has significant behavioral problems.

She has been thrown out of all the day programs in our area. These so called experts can not handle her. [REDACTED] [beneficiary] is the only one who can handle and bring back to being a human being. . . . Please understand that [REDACTED] is the only one who can deal with my sister with out using excessive force which could kill her because of her heart condition."

Without more thorough documentation, the petitioner has not established the specialized and complex nature of the duties to be performed by the beneficiary, such that they would require skills equivalent to those of an individual with a baccalaureate.

The petitioner has failed to establish that any of the four criteria enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered 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 not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.