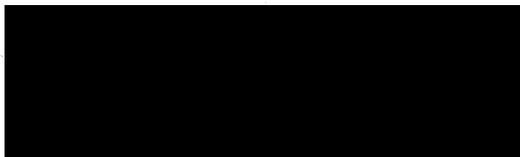


U.S. Department of Homeland Security

**PUBLIC COPY** Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street, NW  
Washington, D.C. 20536



FILE: EAC 02 186 52024 Office: VERMONT SERVICE CENTER

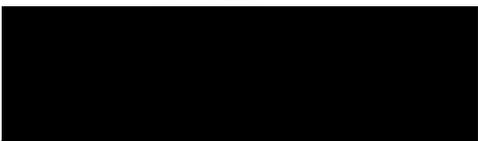
Date: DEC 18 2003

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)

ON BEHALF OF PETITIONER:



identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

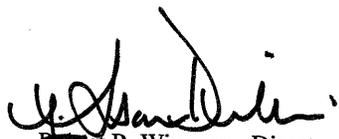
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is an outpatient clinic. It employs 20 people and has a gross annual income of \$1,300,000. It seeks to temporarily employ the beneficiary as a recreational therapist. The director determined that the proffered position requires a state license and that the beneficiary did not possess such a license; therefore, the petition was denied as a matter of law.

On appeal, counsel requests additional time to obtain a license and certification.

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.

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 first issue in this proceeding is whether the proffered position requires licensure in the State of Maryland. In reviewing information from the Maryland Department of Labor, Licensing and Regulation, and the Maryland Department of Health and Mental Hygiene, it appears that the occupation of recreational therapist does not require a license. The director's remarks on this issue are withdrawn.

The petition, however, still may not be approved. The director did not address the issue of whether the proffered position is a specialty occupation. The director briefly discussed the beneficiary's qualifications for the position, but did not go into detail.

The Department of Labor's *Occupational Outlook Handbook (Handbook)* states on page 267, "A bachelor's degree in therapeutic recreation, or in recreation with a concentration in therapeutic recreation, is the usual requirement for entry-level positions." This indicates that the position is likely a specialty occupation.

On appeal, counsel states that the beneficiary has applied for National Council for Therapeutic Recreation Certification, as well as a license from the State of Delaware for "Massage Technical."

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 AAO notes that the beneficiary's education, training and experience are in the areas of massage, homeopathy, computers, and science. A credentials evaluation was submitted with the petition stating that the beneficiary has the equivalent of a bachelor of science degree with coursework in homeopathic medicine and massage therapy. The *Handbook* states that a bachelor's degree should be in therapeutic recreation. The requirements for the National Council for Therapeutic Recreation Certification are for either "a major in therapeutic recreation or a major in recreation or leisure with an option in therapeutic recreation." The beneficiary has none of this training, and so would not qualify for employment in this specialty occupation.

As the director's decision was based on an incorrect presumption that the proffered position requires a professional license, and he did not discuss whether the proffered position is a specialty occupation or whether the beneficiary is qualified to perform a specialty occupation, the matter will be remanded to the director for further consideration. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the proffered position is a specialty occupation and whether the beneficiary is qualified for this occupation, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As

always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's August 12, 2002 decision is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.