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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

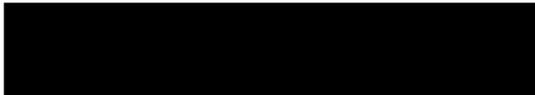
ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS. 3/F
Washington, D.C. 20536



File: EAC 02 031 52412 Office: Vermont Service Center Date:

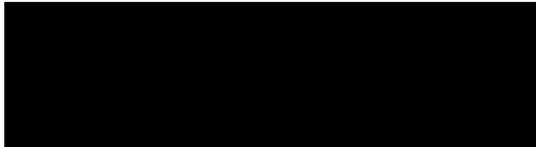
JUL 21 2003
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IN RE: Petitioner:
Beneficiary:



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:



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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a New York corporation that operates a hair salon. It has five employees and a gross annual income of approximately \$46,000. The petitioner seeks to employ the beneficiary as a hair stylist and colorist for a period of three years. The director determined that the proffered position was not a specialty occupation. Counsel appeals that determination alleging that the position is a specialty occupation.

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.

Counsel asserts that the position of hair stylist and colorist is a specialty occupation. The Bureau does not simply rely on a position's title when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position, combined with the nature of the petitioning entity's business operations, are factors that the Bureau considers.

Subsequent to the filing of the petition, the director requested from the petitioner a detailed statement articulating the beneficiary's proposed duties and responsibilities and the percentage of time to be spent performing these duties each day. A request was also made for evidence showing that the petitioner's

industry requires a bachelor's degree in a specific field of study as a standard minimum requirement for the job offered. The petitioner did not provide a detailed job description, but it is apparent from the record that the beneficiary would work as a hair stylist and colorist. The beneficiary does not possess a baccalaureate degree or its equivalent and the petitioner acknowledges that such a degree in a specific field of study is not a standard minimum requirement for the job offered.

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 qualify the offered position as a specialty occupation. The job responsibilities to be assigned to the beneficiary clearly fall within the duties of a barber, cosmetologist or other personal appearance worker. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at 326-327, the Department Of Labor describes in part, the duties of a barber, cosmetologist or other personal appearance worker as follows:

Hairdressers, hairstylists and cosmetologists provide beauty services, such as shampooing, cutting, coloring, and styling hair. They may advise clients on how to care for their hair, straighten or permanent wave hair, or lighten or darken hair color. Additionally, cosmetologists may train to give manicures, pedicures, and scalp and facial treatments; provide makeup analysis; and clean and style wigs and hairpieces.

A review of the *Handbook* finds no requirement of a baccalaureate or higher degree in a specialized area for employment in this field. All States require barbers, cosmetologists, and most other personal

appearance workers to be licensed by the State in which they work. Qualifications for licenses vary. Generally, a person must have graduated from a State-licensed barber or cosmetology school, and some States require graduation from high school. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the position.

Second, 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 offered position. Third, the petitioner failed to present any evidence to establish that parallel positions among similar organizations in the industry commonly require a bachelor's degree or its equivalent, or that the subject position is so complex or unique that it could be performed only by an individual with a bachelor's degree. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform those duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.