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

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

JUL 21 2003

File: LIN-00-122-53536 Office: NEBRASKA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:

[REDACTED]

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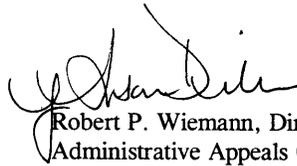
INSTRUCTIONS:

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, Nebraska Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The previous decision of the AAO will be affirmed.

The petitioner is a healthcare placement agency with an unspecified number of employees and an unspecified gross annual income. It seeks to employ the beneficiary as a medical researcher for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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 nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not submitted sufficient evidence to establish the actual nature of the petitioner's business activities or the duties to be performed by the beneficiary.

On appeal, counsel expressed disagreement with the director's decision, but did not respond specifically to the grounds stated by the director.

The AAO summarily dismissed the appeal reasoning that counsel had not identified specifically any erroneous conclusions of law or statements of fact.

On motion, counsel states, in part, that the Bureau failed to consider the documentation provided by the petitioner, including a job advertisement for a business similar to the petitioner.

Counsel's statement on motion is not persuasive. The Bureau does not use a title, by itself, 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. In a letter dated September 25, 2000, counsel described the duties of the offered position as follows:

[H]e will review research documentation regarding solutions for various disorders in the area of blood transfusion. The research will include reviewing guidelines of research, assemble documentation published regarding said blood transfusion disorders and observation of medical records regarding said blood transfusion disorders. Upon reviewing said documentation, [the beneficiary] will provide analysis of the current medical approach for such blood transfusion disorders and will provide his analysis regarding the new methods to be provided for new research to be conducted.

In a letter dated February 1, 2001, the petitioner's vice president described the duties of the proffered position as follows:

Our facility is in the process of developing new methods of treatment conditions involving spine, asteachondrisis and osteoporosis. Said treatment methods are being evaluated and researched based upon raw data assembled by our physicians and provided to [the beneficiary]. In turn, [the beneficiary] provides new methods of treatment based on his education and experience to be tried upon patients through our physicians.

[The beneficiary's] role is to assemble the raw data from each physician, review said information, discuss available methods with the physicians and conduct

ongoing research to provide an up-to-date and experimental methods for treatment.

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.

First, the Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in medical science or a related field. The duties described in counsel's letter of September 25, 2000, are not the same duties that are described in the petitioner's letter of February 1, 2001. The record, however, contains no explanation for this discrepancy. Furthermore, in a letter dated February 1, 2001, the petitioner's vice president refers to "our physicians." The record, however, contains no evidence that the petitioner employs such physicians. It is additionally noted that the petitioner has not addressed the issues raised in the director's decision to deny, such as the record contains no persuasive evidence of the petitioner's claimed business activities, and the petitioner's tax documentation reflects only minimal business activity. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to

explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In view of the foregoing, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as medical science, for the offered position. Third, although the record contains a job advertisement for a research manager position, this advertisement is not persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. The petitioner has not demonstrated that the proposed duties described in the instant petition are as complex as those described in the job advertisement. For example, in the job advertisement, the duties of the research manager include supervising a team of researchers. The petitioner, however, has not provided any evidence that the beneficiary would be supervising a team of researchers. 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 the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors 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.

**ORDER:** The decision of the AAO dated March 6, 2002, is affirmed.