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Bureau of Citizenship and Immigration Services

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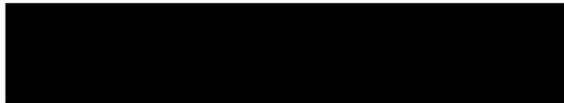
ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, DC 20536



File: WAC 01 246 58279 Office: CALIFORNIA SERVICE CENTER

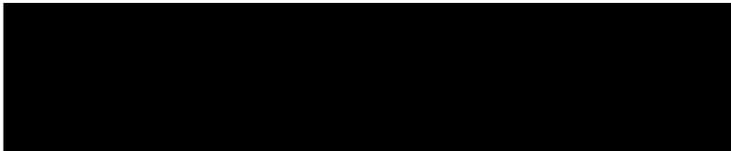
JUN 18 2003
Date:

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:



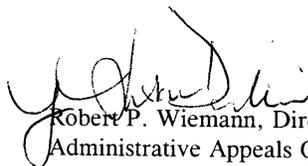
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office 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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a California company primarily engaged in recruiting staff for healthcare facilities. It has over ten employees and a gross annual income of over \$600,000. It seeks to temporarily employ the beneficiary as a medical and clinical laboratory technologist for a period of three years. The director determined that the beneficiary was not eligible to perform the proffered position because she did not possess the requisite state license.

On appeal, counsel submits the names of four individuals for whom the petitioner filed H-1B petitions that were subsequently approved by the Bureau as H-1B eligible medical and clinical laboratory technologists. Counsel claims that the duties of these positions are similar to the proffered position.

Section 214(i)(1) of the Immigration and Naturalization 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 Act further states the following at section 214(i)(2): "For purposes of section 101 (a)(15)(H)(i)(b), the requirements of this paragraph, with respect to a specialty occupation, are—(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. . . ."

With regard to licensure for H-1B classification, 8 C.F.R. § 214.2 (h)(4)(v), states the following:

(A) *General.* If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

(B) *Temporary licensure.* If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of

supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

(C) *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

In addition, 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 issue in this proceeding is whether the beneficiary is qualified to perform the duties of the proffered position. When filing the initial petition, the petitioner submitted a transcript of the beneficiary's academic records, the beneficiary's resume, a copy of a certificate of admission into an undergraduate internship program in medical technology in 1978, and the beneficiary's diploma from the Centro Escolar University College of Medical Technology in the Philippines dated

May 1979. The petitioner also submitted a contract of employment, and an academic credential evaluation report from the International Institute of California in San Jose, California. The latter document stated that the academic program completed by the beneficiary was considered to be equivalent to a U.S. bachelor of science degree in medical technology.

On September 27, 2001, the director requested further evidence for the petition, namely, a copy of the beneficiary's medical technologist license issued by the State of California. The director also stated that if the beneficiary was not in possession of a permanent unrestricted license, then a temporary license, interim permit, or other authorization issued by the appropriate authorities could be submitted. Finally, in the alternative, the director stated that the petitioner could submit evidence that the alien could practice the profession without a license.

On November 27, 2001, the petitioner submitted an excerpt on the job category of clinical laboratory technologists and technicians from the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The petitioner also submitted a document from the Employment Development Department of the State of California that described the position of medical and clinical laboratory technologists. The latter document stated the following:

California is the only state that requires a medical laboratory technologist to be licensed. To be licensed by the State Department of Health Services, one must pass the examination. Various ways to qualify for the examination are:

Bachelor of Science degree in medical technology that includes one year of approved training in a clinical lab.

Bachelor of Arts degree with a major in clinical laboratory studies or a closely related field that includes required coursework, plus one year approved training in a clinical laboratory.

Ninety semester units or equivalent quarter units that include clinical laboratory or closely related courses and completion of two years of approved clinical training are necessary for licensure.

The petitioner resubmitted the beneficiary's resume and academic records, as well as the educational equivalency document. An additional letter from Abbott Laboratories in the Philippines was submitted for the record. In a cover letter, the petitioner stated that the *Handbook* established that the usual educational requirement for an entry-level position as a medical and clinical laboratory technologist is a baccalaureate degree. The petitioner then stated that since the beneficiary had a bachelor of science