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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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**DA**

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

[REDACTED]

File: WAC 01 250 57880

Office: NEBRASKA SERVICE CENTER

Date: JUN 25 2003

IN RE: Petitioner:  
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]

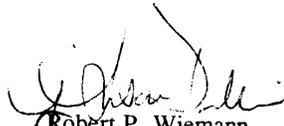
**INSTRUCTIONS:**

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, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Portland, Oregon specialist in traditional Chinese medicine, herbal preparations, and acupuncture that has one employee and a gross annual income of \$118,418. It seeks to temporarily employ the beneficiary as an herbal analyst for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the complex nature of the job, as well as the petitioner's past practice of hiring employees with a minimum of a bachelor's degree, warrants categorizing the position of herbal analyst as 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 fields 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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In response to the director's January 9, 2002 request for a complete, detailed description of the beneficiary's duties, the petitioner outlined the job duties as follows:

(C)onducting research, analysis and related experimentation of traditional Chinese medicine through the use of herbs for advancement and expanded use and acceptability through product and process development and application, quantitative and qualitative analysis and improvement of analytical methodologies. . . . (A)ssisting our organization in the formulation of proposals and related research work on various herbal formulations and components and their potential uses for various conditions. . . . (E)xamining and reporting on a wide body and array of medical, pharmaceutical, health and related information, data, publications and other works.

The director had also requested evidence that the proffered position meets one of the above-noted regulatory criteria to qualify as a specialty occupation. There is nothing in the record to indicate that the petitioner included such evidence in its response to this request, although the petitioner noted that:

(I)n order to be able to properly perform these research related job duties this employee must have an appropriate, basic, fundamental background in medicine, biology, biochemistry, pharmacology or another related major. . . . Without this fundamental educational background in the physical sciences this employee would not have the ability and capability to grasp and understand the scientific concepts, theories and ideas entailed in the research and analysis of information that this job position requires.

On May 31, 2002 the director denied the petition. The director noted that the petitioner had failed to provide documentation supporting its statement that the proffered position qualifies as a specialty occupation.

On appeal, counsel asserts that the job duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually and normally associated with the attainment of a bachelor's degree or higher. In addition, in support of the regulatory criterion that the employer normally requires a degree or its equivalent for the position, the petitioner submits documents to show that two previously employed acupuncturists/herbal analysts held bachelor's degrees or higher. Upon review of the record, it is determined that the petitioner has not presented a persuasive argument for classifying the proffered position as a specialty occupation.

With respect to the criterion described in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, the petitioner has failed to provide any documentation to this effect. In addition, the description of the job duties of the proffered position is vague and generalized, rendering it impossible to make a comparison between this position and those described in reference sources such as the Department of Labor's *Occupational Outlook Handbook*. Accordingly, the evidence does not support a finding that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

Regarding the criterion set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that the degree requirement is common to the industry in parallel positions among similar organizations, the record contains no documentation of industry standards with respect to degree requirements for the position of herbal analyst. Nor has the petitioner made the alternative showing that this particular position is so complex or unique that it can be performed only by an individual with a degree.

Turning to the criterion found at § 214.2(h)(4)(iii)(A)(3), that the employer normally requires a degree or its equivalent for the position, from the employer's own statements it does not appear that the two previously hired acupuncturists/herbal analysts were performing the same job duties as those proposed in the instant case. In a letter submitted on appeal, the petitioner highlighted the fact that the beneficiary's predecessors had been acupuncturists performing acupuncture work. The amount of herbal analysis they performed is not specified. The beneficiary, however, would be hired solely to perform herbal analysis, and not to perform acupuncture at all. Thus the fact that the beneficiary's predecessors, who were hired as acupuncturists, held bachelor's degrees or higher cannot be used to illustrate the petitioner's past hiring practice regarding herbal analysts.

Finally, regarding counsel's statement that the job duties of the herbal analyst are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree, as described at

8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the record contains no evidence to support this criterion. The description of the duties of the herbal analyst position is vague, mentioning in general terms such activities as "research", "analysis", and "experimentation". The petitioner fails to clarify: (1) whether the beneficiary would perform direct patient care; (2) the location where and manner the research and experimentation are carried out; and (3) the amount of time the beneficiary would spend on each stated duty. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Due to the ambiguous account of the duties of the proffered position, it is not possible to ascertain whether or not they are usually associated with the attainment of a baccalaureate or higher degree.

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.