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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

File: EAC-02-099-53260

Office: Vermont Service Center

Date:

MAR 19 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)

PUBLIC COPY

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a neuromonitoring business with ten employees and a gross annual income of \$1,600,000. It seeks to employ the beneficiary as a medical technologist 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), the term "specialty occupation" is defined 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.

The director denied the petition because the petitioner had not demonstrated that the proffered position requires a baccalaureate degree. On appeal, counsel states, in part, that the proposed duties are so complex and specialized that a baccalaureate degree is required. He further states that the petitioner normally requires a baccalaureate degree.

Counsel's statement on appeal 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 the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Performance of Nerve conduction studies which include EEG, evoked potential, TCD, EMG and other neurophysiological monitorings of Lumber [sic], Cervical, Spine, and Craniotomies.

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 argument that the proffered position would normally require a bachelor's degree in a medical related field. The Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, does not specifically address a neuromonitoring technologist position. The website of the American Society of Electroneurodiagnostic Technologists, Inc., at www.aset.org, however, discusses the eligibility requirements for individuals wishing to take the ABRET exams for EEG, EP, intraoperative monitoring. Such requirements are listed, in part, as follows:

Eligibility Requirements for the EEG and EP Written Examinations:

- ...1. Be a student or graduate of an END Program accredited by CAAHEP, OR have a minimum of an Associate Degree and one year of experience, OR have a minimum of three years of experience in the field...

Eligibility Requirements for the EEG and EP Oral and Practical Examinations:

- ...1. Successful completion of the written examination.
2. At least two years (24 months) of continuous experience in the field of electroencephalography (evoked potentials) in any combination of direct

work experience and formal schooling.... (Emphasis in original.)

The above requirements do not demonstrate that a baccalaureate degree is required for the proffered position. Furthermore, it is noted that the beneficiary's educational background has been determined to be the equivalent of two years (60-64 semester credit hours) in medical sciences from an accredited medical college/university in the United States. Thus, 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 shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a medical related field for the offered position. It is noted that in a letter dated February 13, 2002, the petitioner's president states in part, as follows:

Of our eight full-time staff members, five were hired in the past two years. Of our eight staff members four hold [sic] Bachelor's Degrees, and the other four hold Associate's Degrees and have at least two years of related experience. Our part-time staff member holds a Bachelor's Degree as well.

Standard hiring criteria for our company is a Bachelor's Degree in a science related field, i.e. Biology, Pre-Medical, etc, or an Associates Degree or comparable, with two years experience in a related field. [sic]

Clearly, the petitioner's past hiring practices do not demonstrate that it normally requires a baccalaureate degree or its equivalent. The petitioner will hire an employee with an Associate degree plus only two years of related work experience. An associate's degree plus two years of experience does not equate to a baccalaureate degree pursuant to the Bureau's own regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. The three job advertisements have been reviewed. Two of the three positions require a baccalaureate degree. Their job duties, however, do not appear to be similar to those of the beneficiary. For example, such duties include performing "Hematology, Chemistry, Urinalysis, Coagulation & Blood Bank testing" and "build, isolate and plate specimens...." 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 appeal is dismissed.