

D2

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

PUBLIC COPY

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



File: WAC-01-271-53128 Office: California Service Center Date:

MAR 19 2003

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:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

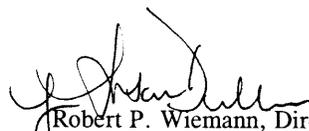
INSTRUCTIONS:

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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an employment agency with four employees and a stated gross annual income of \$600,000. It seeks to employ the beneficiary as a medical laboratory manager for a period of two years. The director denied the petition because the petitioner had not established that the beneficiary was properly licensed to conduct technically related duties in a laboratory in the State of California.

On appeal, counsel submits a brief and additional documentation.

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 determined that the duties of the proffered position required the supervision of medical technologists and the implementation of quality control measures including the testing of materials, instruments, and work performed in a laboratory within the State of California. The director denied the petition because the beneficiary did not possess the proper licensure to conduct technically related duties in a laboratory as required by the California Department of Health Services. On appeal, counsel argues that the beneficiary is qualified to perform services in the offered job because she possesses a foreign bachelor's degree in medical technology, has ten years experience in the medical laboratory environment, and is a licensed medical technologist in the Philippines. Counsel asserts that the proffered position's duties are not strictly administrative in nature because the performance of such duties requires skills such as an understanding

of the testing procedures, equipment, and terminology, as well as the supervision of all work in the laboratory.

Counsel's statements on appeal are not persuasive. The Bureau does not use a title, by itself, when examining the activities to be performed by the beneficiary in the proffered position. 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 that accompanied the initial I-129 petition, the petitioner described the duties of the beneficiary in the offered position as follows:

She will be responsible for directing and coordinating the activities of the workers engaged in performing chemical, microscopic and bacteriological tests. She will prepare schedules and assign worker to duties. She will coordinate the purchasing of laboratory equipment and supplies. She will develop and implement the policies and procedures for documenting, storing and retrieving information. She will be responsible for preparing the budget and authorizing expenditures. She will assure that the high standards of internal quality control programs including the maintenance of quality control graphs and charts are carried out.

In response to a subsequent Service (now the Bureau) request for additional evidence to support the petition, the petitioner submitted another description of the offered job that essentially reiterated the duties listed above. The description includes the following breakdown of the beneficiary's activities in the proffered position on a percentage basis:

- * Perform [q]uality control on the tests performed, reagents, materials, control organisms and equipment. [The beneficiary] will dedicate 40% of her time to these duties.
- * Check the test report before issuing to the requesting physician. [The beneficiary] will dedicate 10% of her time to these duties.
- * Supervise the laboratory technicians, technologists and secretaries. [The beneficiary] will dedicate 20% of her time to these duties.
- * Responsible for purchasing reagents and supplies for the laboratory. [The beneficiary] will dedicate 10% of her time to these duties.
- * Prepare laboratory procedures manual for standard operating procedures. [The beneficiary] will dedicate 20% of her time to these duties.

Pursuant to 8 C.F.R. § 214.2(h)(v)(A):

If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien ... 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.

The petitioner has specifically stated that 40% of the beneficiary's activities in the offered job involve the performance of quality control on the tests performed, reagents, materials, control organisms, and equipment. On appeal, counsel asserts that the proffered position's duties are not strictly administrative in nature because the performance of such duties requires skills such as an understanding of the testing procedures, equipment, and terminology, as well as the supervision of all work in the laboratory. Consequently, it must be concluded that the offered position is that of a supervisory medical technologist acting as a laboratory manager.

A majority of this position's duties involve the direct supervision of medical technologists and technicians, as well as the implementation and performance of quality control measures including the testing of materials, instruments, and work performed in a laboratory within the State of California. The beneficiary does not possess the proper licensure to conduct technically related duties in a laboratory as required by the California Department of Health Services pursuant to sections 1260-1275 of the State of California Business and Professions Code. The petitioner has failed to establish that the beneficiary is properly licensed to practice as a medical technologist in California. In the alternative, the petitioner has not established that the beneficiary will be able to fully practice as a medical technologist in California without such a license. In view of the foregoing, it is concluded that the petition may not be approved.

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 decision of the director will not be disturbed.

ORDER: The appeal is dismissed.