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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: EAC-02-140-53087 Office: Vermont Service Center

Date: MAR 19 2003

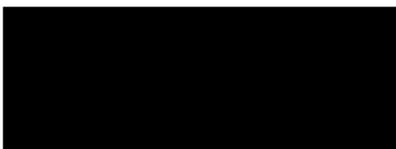
IN RE: Petitioner:
Beneficiary:



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)

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

ON BEHALF OF PETITIONER:



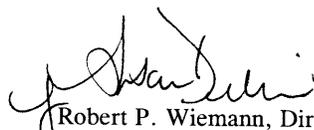
INSTRUCTIONS:

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

The petitioner is a medical practice with 38 employees and a stated gross annual income in excess of \$3.9 million. It seeks to employ the beneficiary as a medical and health services manager 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 and additional documentation.

The term "specialty occupation" is 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.

The director determined that the proffered position was not a specialty occupation because it did not require the services of an individual possessing at least a four-year baccalaureate degree. On appeal, counsel argues that the duties of the offered position are so complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Counsel contends that the Service (now the Bureau) has ignored evidence that the degree requirement is an industry standard for similar positions.

The Bureau does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The Bureau considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Plan, direct, or coordinate medicine and health services in hospitals, clinics, managed care organizations, public health agencies, or similar organizations.

In response to a subsequent request for additional information regarding the initial petition, counsel provided the following description of the petitioner, as well as the duties of the proffered position:

The Petitioner is a medical clinic practicing in Oriental Medicine, Western Medicine, Rehabilitation, Physical Therapy, and Pain Treatment. Petitioner has 38 employees and three different offices in New York. The Medical and Health Services Manager will plan, direct and coordinate these services for the different offices. She will also advise on business strategies (particularly with respect to Chinese clients and clients of Chinese descent who tend to prefer Chinese herbal medicines and pain treatments based in acupuncture) and coordinate day-to-day business respecting particular services offered in different offices, placement of personnel and allocation of costs to the different profit centers. She will also advise on financing, structuring of work and assume responsibility for efficiency of operations.

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 proffered position is that of a health services manager. A review of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at pages 74-77, finds that a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard

credential for most generalist positions in this field. Additionally, the *Handbook* indicates that health services managers require training or experience in both health and management. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations and overcome this particular basis of the director's denial.

The record shows that the beneficiary received a master's degree in business administration from the University of Baltimore in Baltimore, Maryland in July 1999. Copies of the beneficiary's transcripts from this institution reflect that she has successfully completed courses directly related to health care management. Counsel claims that the beneficiary also holds a bachelor's degree from the Shanghai University of Traditional Chinese Medicine in Shanghai, China. While the transcript from the University of Baltimore tends to corroborate this claim, the record does not contain any other evidence to document this claim. Nevertheless, the record contains a certificate from the National Certification Commission for Acupuncture and Oriental Medicine reflecting that the beneficiary has successfully completed all requirements to be certified and designated a "Diplomat in Acupuncture."

As previously discussed, the *Handbook* finds that a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. The petitioner has clearly established that the beneficiary holds a master's degree in business administration, one of the specific specialties cited above. Furthermore, the evidence contained in the record tends to demonstrate that the beneficiary also possesses a foreign bachelor's degree in the health care field, and that she completed graduate courses in health care management. Therefore, the beneficiary is qualified to perform the duties of this specialty occupation.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.