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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.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



File: EAC-02-092-54555 Office: VERMONT SERVICE CENTER 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: SELF-REPRESENTED

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

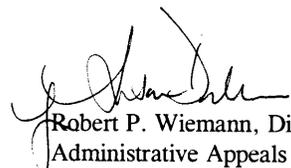
INSTRUCTIONS:

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 sustained.

The petitioner is a vocational school with 45 employees and a gross annual income of \$3 million. It seeks to employ the beneficiary as a vocational training instructor for an approximate period of two years and three months. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, the petitioner submits a brief.

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.

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 a baccalaureate degree is required for the proffered position. The director further found that the beneficiary's baccalaureate degree in nursing does not qualify her for a specialty occupation. On appeal, the petitioner states, in part, that, while the Accrediting Council for Independent Colleges and Schools (ACICS) requires instructors teaching academic subjects to have at least a bachelor's degree, a specific field of study is not specified. The petitioner further states that, in practice, the specific field of study is dictated by the nature of the subjects being taught.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

As an Instructor of Vocational Training, [the beneficiary] will teach courses in Medical Laboratory Procedures to students preparing for Medical Office Specialist degrees. Along with teaching, she will also be responsible for curriculum development, a duty she has also undertaken as the Academic Coordinator of the *Escuela de Estetica Facial y Corporal Biotronic* in Bogotá, Colombia.

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.

In its *Occupational Outlook Handbook*, 2002-2003 edition, at page 199, the Department of Labor describes the training requirements for a postsecondary vocational-technical educational teacher, in part, as follows:

Training requirements for postsecondary vocational-technical education teachers vary by State and by subject. In general, teachers need a bachelor's degree or higher plus work or other experience in their field.

The record also contains documentation from Chapter 2 of Title III of the Accreditation Criteria of the ACICS, entitled "Standards for Non-degree Programs," which describes its teaching requirements, in part, as follows:

A bachelor's degree and appropriate coursework in the assigned subject are required for faculty members teaching general education and other academic courses.

It is noted that not all vocational training instructor positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, a bachelor's degree and appropriate coursework in the assigned subject are normally the minimum requirements for entry into the particular position. 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 regulations.

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 beneficiary holds a degree in nursing from a Colombian institution. A credentials evaluator has determined that the beneficiary's educational background is the U.S. equivalent of a bachelor's degree in nursing. The evaluation appears reasonable and will be accepted. The record also contains a diploma issued to the beneficiary by the HoHoKus School reflecting that the beneficiary successfully completed the course of study for "Medical Assisting Specialist/Sonography Science." As such, the record demonstrates that the beneficiary holds a related bachelor's degree and has taken appropriate coursework in the assigned subject. In view of the foregoing, it is concluded that the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the 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.

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