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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

NOV 07 2003

File: SRC 02 167 50855 Office: TEXAS 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)(1)(b)

ON BEHALF OF PETITIONER:

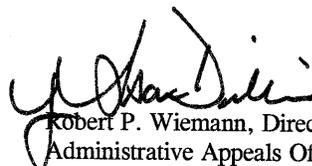
**INSTRUCTIONS:**

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 Citizenship and Immigration Services (CIS) 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 Director of the Texas Service Center approved the nonimmigrant visa petition and certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is a Tampa, Florida specialty staffing service with 6600 employees nationwide and a gross annual income of \$646,000,000. It seeks to employ the beneficiary as a clinical nurse specialist for a period of three years. The director determined that the petitioner established that the proffered position was a specialty occupation.

Neither counsel nor the petitioner submits any additional evidence on notice of certification.

The term "specialty occupation" is defined in section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), 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 field 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 petitioner is a staffing agency dedicated to providing temporary, contract, and permanent placement of professional and technical personnel. The petitioner fulfills its clients' staffing needs by locating suitable personnel in a wide variety of fields. The petitioner would not be the beneficiary's employer, but would place her with a facility requiring her services.

In order to determine whether a job qualifies as a specialty occupation, Citizenship and Immigration Services (CIS) must examine the ultimate employment of the alien. A review of the record fails to reveal any information about the beneficiary's prospective place of actual employment. The petitioner does not provide the address of the beneficiary's proposed job site, nor are there any contracts or other documentation to show that the petitioner has an agreement with a specific facility which desires the beneficiary's services.

Although the petitioner listed the job duties it ascribes to the proffered position, the record contains no information about the beneficiary's job duties at any actual place of business where she might carry out her functions. There is insufficient information to determine the educational requirements of the proffered position.

In *Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000), the court held that the Immigration and Naturalization Service, now CIS, reasonably interpreted the statute and the regulations when it required the petitioner to show that the entities ultimately employing the foreign nurses require a bachelor's degree for all employees in that position. The court found that the degree requirement should not originate with the employment agency that brought the nurses to the United States for employment with the agency's clients.

Without a description of the job duties at the petitioner's client's worksite, the petitioner has not demonstrated that the work that the beneficiary will perform for its client will qualify as a specialty occupation. It is, thus, concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

The matter is remanded to the director so that she may obtain information regarding the facility where the petitioner intends to place the beneficiary, as well as a detailed description of the beneficiary's job duties provided by the petitioner's client(s). The director must afford the petitioner reasonable time to provide such evidence, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The case is remanded for entry of a new decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.