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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 I Street N.W.
Washington, D.C. 20536

JUL 10 2003

File: WAC-01-265-50258

Office: CALIFORNIA 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:

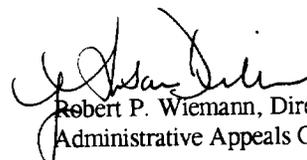
INSTRUCTIONS:

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 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 an orthopedic surgeon with 22 employees and an estimated gross annual income of \$500,000. He seeks to employ the beneficiary as a research assistant 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 statement.

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 denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the proposed duties require extraordinary knowledge of science and medicine.

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

[The beneficiary] is being offered temporary employment in the position of Research Assistant. The responsibilities of this position are numerous and complex, and I intend to hire her to evaluate and prepare reports on technical medical data. In addition,

she will need to analyze research data and new surgical procedures, especially those related to procedures involved in research studies for endoscopic carpal tunnel release. Furthermore, a Research Assistant must collect scientific data by searching specific medical articles in various reference sources. After obtaining this data, she will organize the information and present her research analysis in a brochure format for our patients. These duties involve services in the capacity customary for a research assistant with both excellent computer skills, writing skills, and personal skills in dealing with myself and other professionals at our office. Specifically she will need to utilize her expert knowledge in computer-assisted surgery systems (CAS) in addition to making sure each patient in our office is properly and thoroughly informed.

In order to work as a Research Assistant in our office, a research specialist must possess the knowledge of how to maintain and update our Internet website on a continuing basis. I must first advise her as to what specific technical advances in orthopedic medicine are occurring and on which surgical procedures I am conducting studies. She then must search the articles from reference works, compare and analyze these articles with my technical surgical advances I have developed, and organize and prepare reports on both types of medical material for publication on our office Website. At this time I am interested in hiring a Research Assistant who possesses interpersonal skills as well as one who can evaluate research articles on the outcome of studies for endoscopic carpal tunnel release and write the publications for our office Website, especially research on the results of cubital tunnel surgery and numerous studies of other painful hand injuries in and out of the workplace.

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 similar to that of a medical writer. At page 147 of the *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the Department of Labor describes the positions of science and medical writers as follows:

Science and medical writers prepare a range of formal documents presenting detailed information on the physical or medical sciences. They impart research findings for scientific or medical professions, organize information for advertising or public relations needs, and interpret data and other information for a general readership.

The *Handbook* at page 147 states that a college degree generally is required for a position as a writer or editor. It is noted, however, that not all writer positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the duties are of such complexity as to require a baccalaureate degree in a specialized and related area. 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.

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.