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Citizenship and Immigration Services

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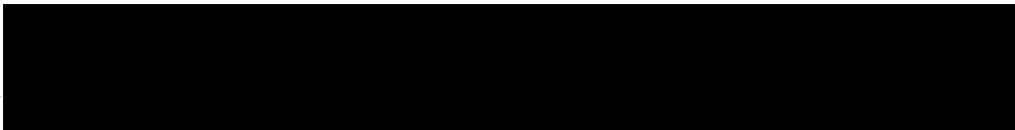
*DA*

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



File: WAC 02 066 51925 Office: CALIFORNIA SERVICE CENTER Date:

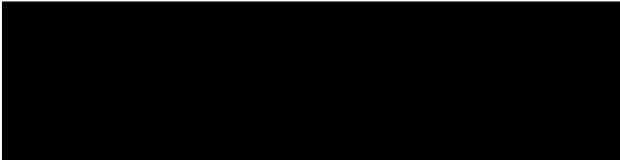
IN RE: Petitioner:



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:



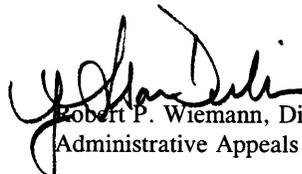
INSTRUCTIONS:

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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an employment agency that has three employees and a gross annual income of \$500,000. It seeks to temporarily employ the beneficiary as a medical laboratory manager for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the duties of the proffered position are not that of a general manager, and that the position is a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act(the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" 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 first issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the California Service Center on December 14, 2001, the petitioner described the duties of the proffered position as follows: "Will manage the administrative aspects of the laboratory. Will be responsible for directing and coordinating the activities of the workers engaged in performing chemical, microscopic and bacteriologic tests."

The petitioner also provided the following job responsibilities in a cover letter submitted with the petition:

[The beneficiary] will be the [m]edical [l]aboratory [m]anager. . . . She will prepare schedules and assign workers to duties. She will coordinate the purchasing of laboratory equipment and supplies. [The beneficiary] will develop and implement the policies and procedures for documenting, storing[,] and retrieving information. She will be responsible for preparing the budget and authoriz[ing] expenditures. [The beneficiary] will assure that the high standards of internal quality control programs[,] including the maintenance of quality control graphs and charts[,] are carried out.

The petitioner added that the beneficiary would work at a clinical laboratory in Porterville, California, for the first year of her employment in the United States and then at two other businesses in the Los Angeles area. The petitioner submitted an itinerary of the three employers and their locations. The petitioner also submitted copies of contracts between the petitioner and the beneficiary, and contracts between the petitioner and the three companies identified by the petitioner as the beneficiary's future employers.

Finally the petitioner provided an excerpt from the 2000-2001 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) with regard to medical technologists. In addressing the specialized or complex nature of the duties of the position, the petitioner stated that it was essential that a laboratory manager, the person who oversees laboratory testing, have both laboratory experience and a bachelor's degree in medical technology, to manage the laboratory technologists who performed the various laboratory tests.

On February 21, 2002, the director asked for further information as to how the proffered position met the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). In particular, he asked for documentation of employees previously hired by the petitioner for the same position as well as a more detailed explanation of the beneficiary's job duties. The director also asked for copies of contracts between the petitioner and the companies for whom the beneficiary would be performing services, as well as an itinerary that listed the locations and organizations for which the beneficiary would be performing work during the duration of the beneficiary's stay in the United States.

In response, counsel resubmitted copies of contracts between the petitioner and the beneficiary, and contracts between the petitioner and the three companies identified by the petitioner as the beneficiary's future employers. Counsel stated that, even though some duties of the medical laboratory manager position are administrative in nature, the majority of the beneficiary's duties required her to direct and coordinate the activities of the medical laboratory technologists performing chemical, microscopic, and bacteriologic tests. The petitioner broke down the beneficiary's job duties and the percentage of time spent on these duties as follows: administrative tasks-10 percent; supervision of laboratory technicians-50 percent; analysis and implementation of quality control-30 percent; and preparation of budgets and authorization of expenditures-10 percent. Counsel asserted that, while the proffered position is for a medical laboratory manager and not for a medical laboratory technologist, the degree requirement also applies to the medical laboratory manager position.

On June 4, 2002, the director denied the petition. In doing so, the director identified the proffered position as a manager and stated that the *Handbook* did not indicate that a bachelor's degree in a specific specialty was required for a managerial position since baccalaureate degrees in business and in various liberal arts fields were equally valid for entry into a managerial position. The director also stated that the evidence in the record did not establish that the proffered position required a person with a baccalaureate degree.

On appeal, counsel asserts that a laboratory manager position is not the equivalent of a managerial position in any other industry, since the laboratory manager not only manages the staff, but also reviews and coordinates the activities of the employees and maintains quality control. Counsel further affirms that it is essential that the laboratory manager understand the medical and scientific terminology, understand the tests being performed in order to determine whether they are being performed correctly, and be able to read and analyze the test results in order to know that the employees are performing their job duties. Counsel asserts, that since the *Handbook* classification of medical technologist states that employees in this career are required to have a degree

in medical technology, the degree requirement also applies to the medical laboratory manager position "by implication."

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. Citizenship and Immigration Services (CIS) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. On page 279, the *Handbook* states the following with regard to medical technologists:

Clinical laboratory testing plays a crucial role in the detection, diagnosis, and treatment of disease. Clinical laboratory technologists, also referred to as clinical laboratory scientists or medical technologists, and clinical laboratory technicians, also known as medical technicians or medical laboratory technicians, perform most of these tests.

. . . .

Medical and clinical laboratory technologists generally have a bachelor's degree in medical technology or in one of the life sciences, or they have a combination of formal training and work experience.

. . . .

Some medical and clinical laboratory technologists supervise medical and clinical laboratory technicians.

With regard to training of medical technologists and career advancement, the *Handbook* on page 280 states:

The usual requirement for an entry-level position as a medical or clinical laboratory technologist is a bachelor's degree with a major in medical technology or in one of the life sciences. Universities and hospitals offer medical technology programs. It also is possible to qualify through a combination of education, on-the-job, and specialized training. . . . The Clinical Laboratory Improvement Act (CLIA) requires technologists who perform certain highly complex tests to have at least an associate's degree.

. . . .

Some States require laboratory personnel to be licensed or registered.

. . . .

Technologists may advance to supervisory positions in laboratory work or become chief medical or clinical

laboratory technologists or laboratory managers in hospitals.

Upon review of the record and the *Handbook* classification, a baccalaureate degree in medical technology or equivalent education and experience in the field of medical technology appears to be the minimum requirement for entry into medical technologist positions. As such, the position of a medical technologist is a specialty occupation. Based on the *Handbook* information on training and career advancement, it also appears that the position of medical laboratory manager in a private laboratory is analogous to that of supervisory medical technologist.

What is less clear in the present adjudication is whether the proffered position is that of a supervisory medical technologist. One difficulty in making this determination is the fact that the record contains no specific information on the exact job duties to be performed by the beneficiary for any of the three contracting companies.

For example, the contracts between the petitioner and the three subscribing companies contain only generic information about the petitioner's responsibilities as well as the subscribing company's responsibilities. For example, in the contract between J.T. Laboratory, Inc. and the petitioner, in Section V. "Duties of Subscriber," at D, it states that the subscriber will be responsible for the work and work product of personnel assigned to the subscriber. Nevertheless, no actual description of the beneficiary's duties as a medical laboratory manager within the respective company is provided. Although the section entitled "Duties of EMI" states that the petitioner can designate on-site supervisors for other EMI employees, no further details are provided as to whether this supervisory position would be the medical laboratory manager position. Information as to the number and professional level of personnel that the beneficiary would supervise or where she would work within the administrative or supervisory structure of the companies is not presently in the record.

Furthermore the generic contracts do not identify which of the four professions listed on Exhibit A the beneficiary would be performing. These four job/employment classifications include both the employment category of medical technologist and medical laboratory manager. Without further clarification, it appears that the beneficiary could be employed by any of the four companies as either a medical technologist or a medical laboratory manager. Finally it should also be noted that the record is not sufficient with regard to the nature of the business of the third company listed by the petitioner, namely, Mega Consulting Services, and whether this entity is a medical laboratory.

In addition, although the petitioner has stated that it is the employer of the beneficiary, the actual employers appear to be the three companies listed in the itinerary submitted by the

petitioner. It is noted that the actual employer of the beneficiary, as opposed to the entity that hires the beneficiary, needs to establish that a degree or its equivalent is required for the proffered position. In *Defensor v. Meissner*, 201 F.3d 384 (5<sup>th</sup> Cir. 2000), the court held that CIS reasonably interpreted the statute and the regulations when it required the petitioner to show that the entities ultimately employing foreign nurses require a bachelor's degree for 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. While this decision was directed at nurses, it can be applied to other employment classifications.

In sum, the petitioner has not provided sufficient evidence to clarify the record as to the actual employer of the beneficiary, the actual job duties of the proffered position, and the nature of the business of all three companies who negotiated contracts with the petitioner. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Without more persuasive testimony, the petitioner has not established that the proffered position is that of supervisory medical technologist as described in the *Handbook*. Accordingly the petitioner has not established any of the four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). This is due to the fact that the petitioner has not established either the actual job to be performed by the beneficiary or the beneficiary's actual employer. Without the establishment of the actual job or employer, the remaining criteria cannot be met. It is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position. 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.

In his request for further evidence, the director requested a copy of the beneficiary's permanent California Medical Technologist license, or evidence of any other temporary or interim licensing of the beneficiary. In the alternative, the director stated that the petitioner could submit evidence that the beneficiary could perform the proffered position without a license.

With regard to the beneficiary's need for licensure, counsel submitted an excerpt from the DOL *Handbook* on medical and health services managers. Counsel asserted that since the *Handbook* did not indicate that these medical administrative positions required licenses to perform their duties, the beneficiary should not be required to have a license to perform the duties of a medical laboratory manager.

Counsel also submitted copies of the *California Occupational Guide* as evidence that the beneficiary did not need a license as a medical laboratory technologist to perform the duties of a medical laboratory manager. Counsel stated that since the beneficiary would not be performing any medical tests herself, she did not need to be licensed. Counsel stated the following:

[E]ven though the knowledge and training required for the position of medical laboratory technologist is applicable to the position of medical laboratory manager, the same is not true as to the licensing requirement. [The beneficiary] should not be required to submit a copy of her license since the State of California does not require a license for the position of medical laboratory manager.

Upon review of the record, the petitioner has not presented sufficient evidence to establish that the beneficiary, as a supervisory medical technologist, would not be required to have a license to perform the duties of her position. Counsel's arguments with regard to why the position of medical laboratory manager is equivalent to that of medical technologist in terms of academic credentials can also be used to establish why both professions would require a license in the State of California. For example, if medical laboratory managers come from the ranks

of licensed medical technologists, and have responsibilities beyond administrative duties that involve monitoring quality assurance standards for a laboratory and its staff, it would appear that, by implication, the laboratory manager would have to be licensed to supervise other licensed medical technology personnel. Counsel's statement with regard to considering the proffered position similar to a health services administrator is not persuasive. The proffered position is not analogous to the health services administrator position, which requires postgraduate education or equivalent experience in specialties distinct from those required for the medical technologist classification.

In reviewing the *California Occupational Guide* materials submitted by the petitioner, these materials correspond closely to the information provided in the *Handbook* as to job duties for medical technologists. The *Guide* also mentions supervisory medical technologists, and refers to required licensing to direct a laboratory as follows:

Technologists may become "working" supervisors, who coordinate and perform the work of a single unit or shift. Some technologists advance to administrators who plan and oversee all laboratory operations. Technologists with a least four years of varied experience and advanced education may qualify for the Clinical Laboratory Bioanalyst license which allows them to direct an independent laboratory.

See section on medical and clinical laboratory technologists in the *California Occupational Guide*, Number 17 at <http://www.calmis.ca.gov/file/occguide/MDCLINLB.HTM> (available as of September 15, 2003). To the extent that the job duties of a supervisory medical technologist as outlined in both the *California Occupational Guide*, and in the *Handbook* appear to fall within the classification of a medical technologist, the beneficiary would appear to be subject to licensure in the State of California.

It should also be noted that, although a close review was made of the materials placed in the record, no educational equivalency document that evaluated whether the beneficiary's foreign university studies were equivalent to similar studies at an accredited U.S. university was found. Pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(C)(2), the petitioner has not met this statutory requirement for an H-1B petition. As the appeal will be dismissed on other grounds, this issue and the issue of licensure need not be examined further.

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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.