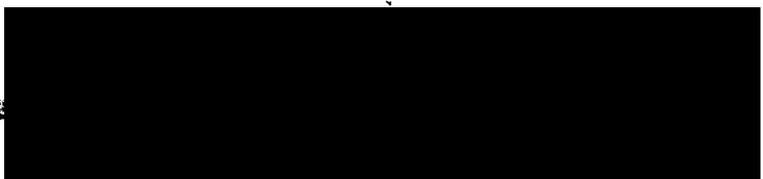


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U.S. Citizenship
and Immigration
Services



D2

FILE: WAC 03 049 54723 Office: CALIFORNIA SERVICE CENTER Date: DEC 27 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a skilled nursing facility that seeks to employ the beneficiary as a medical writer. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional evidence.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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)(iii)(C), to qualify to perform services in a specialty occupation, an 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 record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation.

The petitioner is seeking the beneficiary's services as a medical writer. The petitioner's November 21, 2002 letter stated that "a university[-] level education in a related filed [sic] is deemed essential for this job." Its September 12, 2003 letter stated that the proffered position "can only be performed by an individual with a medical background." The petitioner's job announcement read:

REQUIREMENTS:
MINIMUM B.S. DEGREE IN A MEDICAL
FIELD; WITH OR WITHOUT EXPERIENCE;
NO LICENSE REQUIRED

The director stated that the evidence indicated that the petitioner seeks a candidate with a medical background, and that its job announcement sought candidates with a bachelor's degree in a medical field. The director stated that the beneficiary holds a bachelor's degree in biology, which is distinct from the medical field, notwithstanding its relationship to medicine. The director stated that the beneficiary's educational background satisfied only a part of the education, training, or experience required to qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C).

On appeal, counsel states that the petitioner's September 12, 2003 letter stated that it requires "a bachelor's degree and a medical background" for the position; it does not require "a college degree in medicine" as suggested by the director. Counsel emphasizes that the petitioner requires "a medical background and a bachelor's degree." Consequently, counsel contends that the beneficiary is qualified to perform the duties of the proposed position based on her education, training, and work experience.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position.

Counsel states that the petitioner does not require that a candidate hold "a college degree in medicine" as suggested by the director, but instead requires "a medical background and a bachelor's degree."

Counsel's statements are not convincing. Although the petitioner's November 21, 2002 and September 12, 2003 letters never specifically stated that it required a bachelor's degree in a medical field, the petitioner's job announcement plainly indicated that it requires at least a bachelor of science degree in a medical field. Given this apparent inconsistency in the petitioner's evidence regarding its degree requirement, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the petitioner has neither explained nor resolved this inconsistency. Consequently, the AAO will regard the job announcement as indicating that the petitioner required a baccalaureate degree in a medical field for the proffered position.

The AAO observes that counsel's argument is not persuasive for another reason. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "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. By stating that the petitioner merely required "a medical background and a bachelor's degree," the petitioner would fail to establish that the medical writer job qualifies as a specialty occupation because the petitioner must demonstrate that it requires a bachelor's degree in a *specific specialty*.

The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. The beneficiary does hold a foreign degree determined to be equivalent to a bachelor of science degree in biology from a regionally accredited institution of higher education in the United States. As previously discussed, the proffered position required a baccalaureate degree in a medical field. A bachelor's degree in biology is not the same as a degree in a medical field. A biology degree involves the study of the living world, which includes the study of plants, animals, microorganisms, ecology, the biosphere, and the human body. A degree in the medical field is very specific: it focuses on the human body. Consequently, the beneficiary's degree is only tangentially related to the proffered position. The petitioner, therefore, must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

No evidence in the record establishes the first four criteria under 8 C.F.R. § 214.2(h)(4)(iii)(D). Consequently, CIS must determine the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Considered collectively, the evidence in the record does not establish that the beneficiary is qualified to perform the duties in a specialty occupation. The evidentiary record contains the beneficiary's transcript from Quezon City Medical Center and Colleges, Quezon City, Philippine Islands, and certificates. The beneficiary's transcript lists courses that may be relevant to a medical degree: organic chemistry, biochemistry, genetics, microtechnique, cell biology, vertebrate embryology, microbiology, radiation biology, and bioresearch. But the field of biology is expansive. It includes the study of plant, animal, and marine life. Thus, the AAO cannot determine whether the seemingly relevant courses relate to the study of the human body or to the study of other subjects such as plant, animal, or marine life. The certificates in the record relate to certified nurse assistant and RNA training in certain subjects. This training is very basic and would not rise in complexity to the level of a course in a bachelor's degree in a medical field. There are no employment verification letters in the evidentiary record. Based on the evidentiary record, the petitioner cannot demonstrate that the beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; or that the beneficiary has recognition of expertise.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the proffered position does not qualify as a specialty occupation. A thorough review of the duties of the proffered position reveal that they would not require a bachelor's degree in a specific specialty.

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.

ORDER: The appeal is dismissed. The petition is denied.