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U.S. Citizenship
and Immigration
Services



FILE: WAC 03 037 50770 Office: CALIFORNIA SERVICE CENTER Date: JUL 20 2004

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 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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner operates a surgical clinic and seeks to employ the beneficiary as a pediatric consultant. The petitioner 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 proffered position is not a specialty occupation. On appeal, the petitioner submits a brief.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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 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:

[A]n 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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceedings before the AAO contains: (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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a pediatric consultant. Evidence of the beneficiary's duties includes the I-129 petition with attachment, and the petitioner's response to the director's request for evidence. According to evidence, the beneficiary would: (25 percent of the time) educate staff on how to diagnose and treat pediatric disorders and pathologies, and distinguish them from those of an adult, based on patient symptoms, laboratory test results, x-rays, physical appearance, age, etc., present lecture material to staff members, based on research and analysis of common and current trends in pediatric disorders using medical journals, reports and other written materials, using verbal examples, pictures and charts; (25 percent of time) conduct monthly seminars for staff and physicians on specific pediatric conditions requiring surgical treatment based on current medical research and new medical findings and technology; (25 percent of the time) research and present updated information to physicians and staff on pediatric illnesses and conditions which require surgical treatment, including reconstructive plastic surgeries for children in accidents or who need other corrective surgery for aesthetic purposes, such as to correct facial maladies; and (25 percent of the time) conduct specific research, as directed by physicians, for utilization and formation of physicians' medical opinion on diagnosis and treatment based on patients' symptoms, laboratory test results, x-rays, etc. The petitioner requires a minimum of a bachelor's degree in biology, medicine, or a related field for entry into the offered position.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. A portion of the duties of the proffered position are similar to those noted for physicians and surgeons. The *Handbook* notes that physicians and surgeons diagnose illnesses and prescribe and administer treatment for people suffering from injury or disease. Although the petitioner claims that the beneficiary will not practice medicine or have patient contact, he notes that the beneficiary would: educate the staff (including physicians) on how to diagnose and treat pediatric disorders and pathologies, and distinguish them from those of an adult based on patient symptoms, laboratory test results, x-rays, physical appearance, age, etc. The performance of these duties would necessarily require the beneficiary to review patients' medical records, x-rays, test results, and physical appearance in teaching physicians how to diagnose and treat pediatric disorders and pathologies. The beneficiary would not be able to review patients' physical appearance without direct contact. Teaching physicians to diagnose an illness after observing patients and their medical records involves making, or assisting in the making, of a diagnosis. It is, therefore, conceded that the proffered position is a specialty occupation as the position requires the beneficiary to perform duties normally performed by licensed physicians. As such, the beneficiary must satisfy governmental licensing requirements for physicians. As noted in the *Handbook*, all 50 States and the District of Columbia require physicians to be licensed. The record does not reflect that the beneficiary possesses a license to practice

medicine. Accordingly, the beneficiary does not appear qualified to perform the duties of the offered position. The director's decision shall accordingly be withdrawn, and this matter remanded to the director to determine whether the beneficiary is qualified to perform the duties of a licensed physician. The director may obtain such additional information as he deems necessary in rendering his decision.

ORDER: The director's decision is withdrawn. This matter is remanded to the director for entry of a new decision commensurate with the directives of this opinion.