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**U.S. Citizenship  
and Immigration  
Services**



FILE: WAC 01 257 60092 Office: CALIFORNIA SERVICE CENTER Date: **MAR 09 2004**

IN RE: Petitioner:   
Beneficiary:

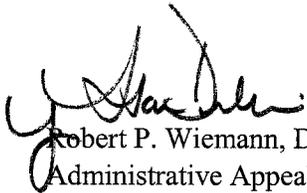
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 appeal will be sustained. The petition will be approved.

The petitioner is a garment manufacturer that seeks to employ the beneficiary as chemist. 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 he found that the petitioner had failed to prove that it had a need for a chemist; thus, the record did not show that the proffered position was a specialty occupation. On appeal, counsel submits a brief and other documentation.

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.

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 proceeding 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a chemist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that involve testing the chemical make-up of the dyes in the cloth that the petitioner purchases to fabricate garments. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in chemistry.

The director found that the record failed to establish the existence of a bona fide position as a chemist in the petitioner's employ. The director indicated that there was confusion in the record regarding for whom the beneficiary would actually be working—the petitioner, which constructs the garments, or another company, which dyes the cloth. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner explains that the petitioner, the cloth dyeing company, and several other firms involved in the garment manufacturing process all belong to the same owner or to the owner's relatives, a factor which may have led to a lack of clarity of the employer-employee relationship in the original filing. The petitioner and the president of the dyeing factory clarify the role of a chemist with the petitioner's company, as something of a chemical quality assurance officer who verifies the chemical conformity of the cloth to be purchased and made into clothing. Given the other documentation regarding the petitioner's activities and operations, this appears to be a reasonable and bona fide position.

CIS acknowledges that a chemist position falls within the category of a specialty occupation. Moreover, the beneficiary holds a Master of Science degree in chemistry from a Pakistani university, which has been evaluated to be the equivalent of a U.S. Bachelor of Science degree in chemistry. Thus, the beneficiary is qualified to perform the duties of the proffered specialty occupation. The clarification and documentation submitted on appeal demonstrate that the petitioner has need of a chemist; hence, the director's concerns regarding the bona fides of the position have been overcome.

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.