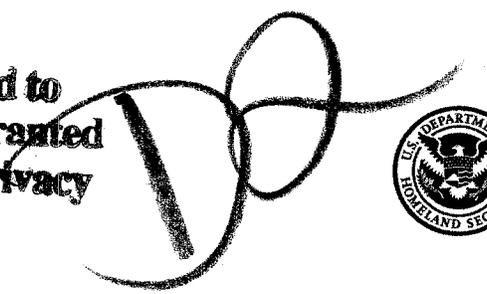


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U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



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



FILE: WAC 02 287 52077 Office: CALIFORNIA SERVICE CENTER Date: **MAR 10 2004**

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

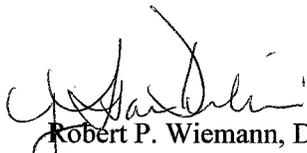
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



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 provides medical and laboratory testing services to a variety of clients. It seeks to employ the beneficiary as its laboratory Director, and endeavors to classify her 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 on the basis that the offered position was not a specialty occupation. On appeal, counsel submits a brief and additional information.

The 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 Immigration and Nationality Act (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 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:

[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 laboratory director. Evidence of the beneficiary's duties was included with the I-129 petition and in response to the director's request for evidence. According to this evidence the beneficiary would: develop and implement policies and procedures for documenting, storing, and retrieving information, and for other data in conformance with federal, state, and local statutes; supervise laboratory personnel in preparing and analyzing medical documents; participate in the development and design of computer software for a computerized health information system; coordinate medical care evaluation with the medical staff and develop criteria and methods for evaluation; develop all aspects of staffing, budgets, organizational structure and goals of assigned projects; develop in-service educational materials and conduct instructional programs for health care personnel; and analyze patient data for reimbursement, facility planning, quality of patient care, risk management, utilization management and research. The petitioner requires a minimum of a bachelor's degree in health science or a related field. The beneficiary would report directly to the president of the petitioning entity.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel indicates that the offered position satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (4). In support of that assertion counsel submits a brief and additional evidence.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*) for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those performed by medical and health services managers. These positions encompass all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. Medical and health service managers include generalists and specialists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system. The beneficiary would be deemed a specialist as she will be in charge of a specific department or service (the laboratory) within the petitioner's organization. The *Handbook* notes that a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalists, while a bachelor's degree is adequate for some entry level positions in smaller facilities and at the departmental level. For clinical department heads a degree in the appropriate field and work experience may be sufficient for entry, but a master's degree may be required for advancement.

The proffered position is for a laboratory director in a facility with annual income exceeding \$1,000,000 that will, among other duties, develop policy and procedure for the department. As noted in the *Handbook*, a minimum of a bachelor's degree is standard for entry into the position. The petitioner has, therefore, established that the proffered position is a specialty occupation as it satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The director did not comment on the beneficiary's qualifications to perform the duties of a specialty occupation, as the petition was denied on other grounds. The record is, however, sufficient for the AAO to make that determination.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
  - (i) completion of such experience in the specialty equivalent to the degree, and
  - (ii) 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, 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 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.

An educational evaluation report prepared by Foundation For International Services, Inc., indicates that the beneficiary's foreign degree is equivalent to a Bachelor's Degree in Biology, and a Doctor of Medicine Degree, awarded by a regionally accredited university in the United States. The petitioner has, therefore, established that the beneficiary qualifies to perform the duties of the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

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 decision of the director will be withdrawn and the appeal will be sustained.

**ORDER:** The decision of the director is withdrawn and the appeal is sustained. The petition is approved.