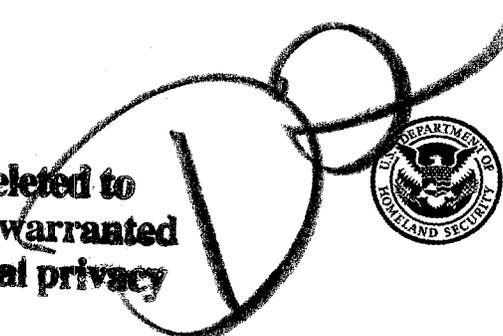
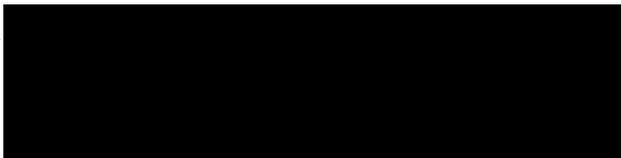


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship
and Immigration
Services



FILE: EAC 02 247 54363 Office: VERMONT SERVICE CENTER Date: **MAR 15 2004**

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

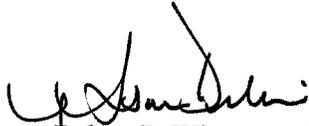
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 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 therapy lab that seeks to employ the beneficiary as a medical technologist. 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 proffered position is not a specialty occupation. On appeal, counsel states, in part, that the proffered position is not just that of a medical technologist, but is supervisory as well.

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 medical technologist. Evidence of the beneficiary's duties includes: the Form I-129; counsel's letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to counsel's letter of July 22, 2002, the beneficiary would perform duties that entail, in part: supervising technical and nontechnical employees; training employees in technical procedures; preparing work schedules for employees and evaluating their performance; maintaining the quality control program; maintaining and repairing equipment; overseeing laboratory tests and reporting laboratory findings; and developing new laboratory techniques. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree or have a combination of education with practical experience, or both.

In denying the petition, the director found that the record did not corroborate the petitioner's assertion that the beneficiary would perform the duties as described in the letter accompanying the petition. For example, the director mentioned that the petitioner's assertion was undercut by its job posting. In the denial letter, the director noted that the petitioner's submitted information from the Department of Labor' *Occupational Outlook Handbook* (the *Handbook*) indicates that a bachelor's degree is not required to perform the duties of a medical and clinical laboratory technician. Moreover, the director noted that the *Handbook* reveals that clinical laboratory technologists and technicians are usually found in hospitals, medical laboratories, or offices and clinics of physicians. The director questioned whether the petitioning entity actually performs testing that requires the proffered position, and stated that the beneficiary's duties are overstated technician/support duties. Finally, the director stated that the record did not support the petitioner's contention that it normally requires laboratory technicians to possess a bachelor's degree in a related field.

On appeal, counsel contends that the proffered position is not just a medical technologist, but is a supervisory position and that the duties - which are not overstated - reflect this distinction. Moreover, counsel states that the petitioner claimed that the job posting was on the bulletin board for 90 days and that the petitioner historically requires at least a four-year degree in medical technology plus two years of experience for the proffered position. Counsel, finally, insists that the *Handbook* should not be determinative in the outcome of the petition given that the proffered position is not just a medical technologist but is a supervisor as well.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO considers first the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. With respect to the job duties of the proffered position, counsel's letter, dated July 22, 2002, described the duties of the proffered position. However, the duties as described by counsel are inconsistent with the duties as described by

the petitioning entity in the document entitled "Notice of Job Offer." The notice describes the proffered position – medical technologist supervisor – as follows:

Must have a bachelor in medical technology or foreign equivalence + 2 yrs. of experience. Interviewing patients, measure vital signs, prepare treatment room for examinations, cleans [and] sterilizes equipment. Inventories & orders supplies. Keep billing records.

Given the evident inconsistencies in the petitioner's description of the duties of the proffered position with counsel's description of the duties, the AAO finds that 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, no evidence in the record explains the fundamental inconsistencies of the job duties. Consequently, the AAO will disregard the description of the job duties as provided by counsel and will accept the duties as described by the petitioner in the job offer. It is important to note, moreover, that uncorroborated assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is analogous to that of a medical technologist. The duties of the proffered position resemble those performed by a medical assistant. According to the *Handbook*, a medical assistant position does not require a bachelor's degree as the minimum entry requirement; employers accept candidates who have completed a postsecondary program that usually lasts either one year or two years. Accordingly, the petitioner fails to establish the first criterion.

To establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations – counsel's letter, dated August 29, 2002, claimed that the petitioner had consulted with several related companies in the industry and that all of the companies reported that a bachelor's degree in medical technology is required for the proffered position. Although counsel's letter referred to submitted advertisements from the newspaper, the record did not contain these advertisements.

Counsel's claim, that companies reported that a bachelor's degree in medical technology is required for the proffered position, is without merit. There is no declaration from the petitioner regarding this alleged statement. As the AAO has previously noted, the uncorroborated assertions of counsel do not constitute evidence. *Matter of Obaigbena, id*; *Matter of Ramirez-Sanchez, id*. Accordingly, the AAO gives no weight to counsel's claim.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree.

With respect to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – that the employer normally requires a degree or its equivalent for the position, counsel asserts on appeal that the petitioner has historically required the supervisor, medical technologist, to possess at least a four-year degree in medical technology. However, there is no evidence in the record to substantiate counsel's assertion. Again, the uncorroborated assertions of counsel do

not constitute evidence. Accordingly, counsel's assertion about the petitioner's past practice is given no weight in this proceeding. *Matter of Obaigbena, id; Matter of Ramirez-Sanchez, id.*

There is no evidence in the record that would establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As already discussed, the duties of the proffered position mirror those performed by medical assistants, and the *Handbook* reveals that a medical assistant does not require a bachelor's degree.

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

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.