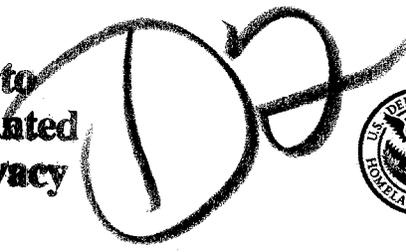


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship
and Immigration
Services



FILE: SRC 02 146 50007 Office: TEXAS SERVICE CENTER

Date: **MAR 15 2004**

IN RE: Petitioner:
Beneficiary:

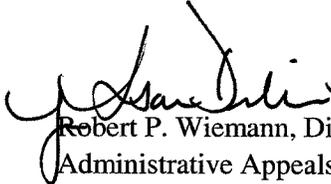


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) (i) (b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i) (b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 dismissed. The petition will be denied.

The petitioner is a hospital that seeks to employ the beneficiary as a staff radiologic 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, the petitioner resubmits a credentials evaluation report and submits a job description for the proffered position.

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, including the petitioner's April 1, 2002 cover letter; (2) an additional letter, dated November 13, 2002, from the petitioner; (3) the petitioner's fax to the director, dated December 5, 2002; (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 radiologic technologist. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and other documentation

submitted by the petitioner apparently in response to the director's two requests for further evidence. According to these materials, the beneficiary's duties entail: performing general radiographs; assisting in fluoroscopic exams; assisting, where possible, in fluoroscopy (portable) exams, when required; and assisting in finding and recording radiographic studies.

The director found that the proffered position was not a specialty occupation and referred to the description of radiologic technologists and technicians in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition. The director determined that the proffered position did not require a baccalaureate degree or higher or its equivalent for entry into the position. The director found further 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 stated that it filed the I-129 because the beneficiary's job and position had changed. In addition the petitioner stated that the beneficiary had experience in computerized tomography (CT) and in magnet resonance imaging (MRI). In addition, the petitioner resubmits the beneficiary's temporary license as certified medical radiologic technologist from the State of Texas, and submits the beneficiary's job evaluation in his present position.

On appeal, the petitioner appears to state that the duties of the position changed, and that the beneficiary presently has a supervisory position. Citizenship and Immigration Services (CIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). Any facts that come into being subsequent to the filing of a petition cannot be considered when determining whether the proffered position is a specialty occupation. *See Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). For purposes of this proceeding, the proffered position will be examined based on the information contained in the initial petition.

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 turns first to 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 Department of Labor's *Occupational Outlook 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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to academic credentials of radiology technologists or technicians, on page 297, the *Handbook* states that formal training programs in radiograph range in length from one to four years and lead to a certificate, associate's degree, or bachelor's degree. According to the *Handbook*, a two-year associate's degree program is the most prevalent formal training program. The *Handbook* does not indicate that the petitioner would require a baccalaureate degree in a specific specialty for entry into the proffered position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted no further documentation for academic credentials required of other radiologic technicians or technologists. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner, in its response to the director's request for further evidence, provided no further information on the academic credentials of its current radiologic technicians or technologists. Thus, the petitioner has not established that it requires individuals hired as radiologic technicians to possess a bachelor's degree in a specific specialty.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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. Based on the description of areas of competency contained in the beneficiary's evaluation, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.