

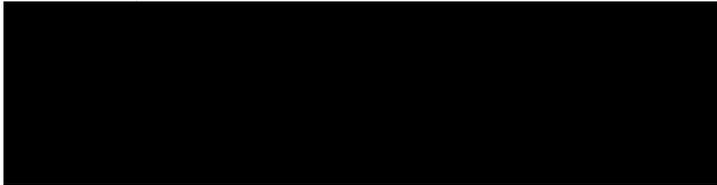
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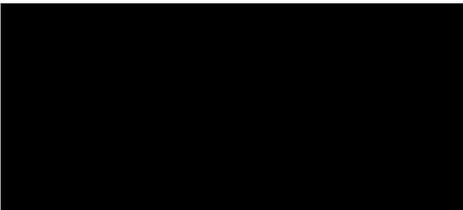
MAR 22 2004

FILE: LIN 02 196 54861 Office: NEBRASKA SERVICE CENTER Date:

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*  
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 The director's decision will be withdrawn and the matter remanded to the director to determine whether the proffered position qualifies as a specialty occupation.

The petitioner, a medical research site that conducts clinical trials, seeks to employ the beneficiary as a clinical research specialist. 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 on the ground that the beneficiary was a graduate of a foreign medical school coming to the United States to perform duties in the medical profession, and did not satisfy the requirements of 8 C.F.R. § 214.2(h)(4)(viii).

On appeal, counsel submits a brief. Counsel states, in part, that neither the petitioner, nor the beneficiary, are subject to the provisions of 8 C.F.R. § 214.2(h)(4)(viii), as the beneficiary is not coming to the United States to perform the services of a physician.

Counsel is correct in his assertion. The regulation at 8 C.F.R. § 214.2(h)(4)(viii) applies only to physicians coming to the United States to work as physicians, and who will provide direct patient care, or are coming to teach or conduct research at or for a public or nonprofit private educational or research institution or agency. The regulation does not apply to foreign physicians seeking admission to the United States to perform services in some other capacity. As such, the director's decision will be withdrawn and this matter shall be remanded to the director who shall determine whether the proffered position qualifies as a specialty occupation. The director may obtain such evidence as he deems necessary in rendering that opinion.

**ORDER:** The director's December 27, 2002, decision is withdrawn. The matter is remanded to the director for entry of a new decision consistent with the directives of this opinion.