

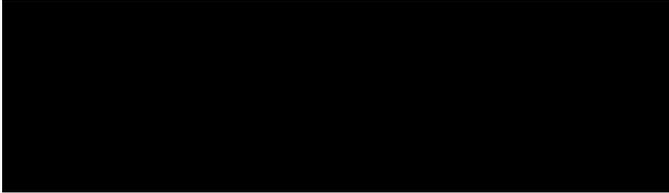
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U.S. Citizenship
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Services

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invasion of personal privacy**



DA

NOV 23 2004

FILE: WAC 03 089 50282 Office: CALIFORNIA SERVICE CENTER Date:

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. 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 an acute care hospital that seeks to employ the beneficiary as a radiological 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 it is not a specialty occupation, and the beneficiary is not qualified to perform the duties of the position. Counsel states that the position is a specialty occupation based on the complexity of the duties, and that the beneficiary is qualified to perform the duties of the position. Counsel resubmits documentation.

Section 214(i)(1) of 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 petitioner's letter of support; (3) the director's notice of intent to deny the petition, dated June 24, 2003; (4)

the petitioner's letter that responds to the director's notice of intent to deny, dated July 18, 2003; (5) the director's denial letter; and (6) 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 supervisory radiology technologist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; and counsel's letter in response to the director's notice of intent to deny the petition. According to the job description submitted by the petitioner, the beneficiary would supervise and administer the functions and activities of the radiology department, make sure that the radiological technicians take the x-rays and administer non-radioactive materials in accordance with strict procedures and protocols; administer the operation of computed tomography (CT) and magnetic resonance imaging equipment; supervise the preparation of patients prior to the actual taking of radiological examinations; make sure that the area for radiological examinations is properly prepared in accordance with strict standards; make sure that technicians and other personnel in the radiological department follow physician's orders precisely and conform to the regulations concerning the use of radiation to protect themselves, their patients, and co-workers from unnecessary exposure; administer the accurate keeping of patients' records, prepare work schedules of the staff employees of the radiology department; update the hospital on current technology and assure the proper maintenance of radiological equipment. The petitioner indicated that the position would require an individual with a bachelor's degree in radiologic technology.

The director denied the petition and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of radiologic technologists and technicians. The director stated that although the *Handbook* indicated that a baccalaureate level of training was preferred for the position, the degree was not a normal, industry-wide minimum requirement for entry into the position. The director also stated that counsel's argument with regard to the administrative and supervisory nature of the duties was not persuasive. The director stated that the *Handbook* only established that a bachelor's degree was desirable for supervisory, administrative, or teaching positions within the radiologic technology field, and was not a requirement to enter 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).

In addition, the director stated that the petitioner had not established that the beneficiary possessed a license for the position of supervisory radiologic technician or that the state of California does not require radiologic technologists to be licensed. The director noted that the *Handbook* stated that 35 states and Puerto Rico required licensing of radiologic technologists and technicians.

On appeal, counsel states that the director relied on a literal interpretation of the Department of Labor's description of degree preferences for supervisory, administrative and teaching positions within the radiological technology field. Counsel then interprets the DOL description to mean that most employers prefer that individuals who fill such positions have a bachelor's or master's degree in the relevant field. Counsel states that the complexity and specialization of the duties of the proffered position make it a specialty occupation and cites to *Matter of Caron* 19 I&N 791 (Comm. 1988) and *Hong-Kong T.V. Video Program, Inc. v. Ilchert*, 685 F. Supp 712 (N.D. 1988). Counsel states that the director failed to consider the complexity and specialized nature of the proffered position as the determining factor in whether the position was a specialty occupation. Finally, counsel states that the beneficiary will perform supervisory and administrative

functions and will not personally operate radiologic equipment. As a result, counsel asserts that the beneficiary does not need a license to perform the duties of the proffered position.

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 *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. Although the director stated that the *Handbook* indicated that a baccalaureate level of training is preferred for entry into the position, this statement is incorrect. The *Handbook* indicates that most employers prefer to hire individuals with formal training. Furthermore, the *Handbook* states that formal training programs in radiography range in length from one to four years and that two-year associate's degree programs are the most prevalent formal training programs. Thus, the *Handbook* only establishes that employers hire individuals for radiologic technology positions who have had formal training. In addition, it appears that two-year associate's degree programs are the most prevalent formal training programs. Thus, the *Handbook* does not establish that the proffered position requires a baccalaureate degree in a specific specialty for entry into the position. It should be noted that while the petitioner's desire to have an individual with a bachelor's degree in radiologic technology as the supervisor of its radiology department appears reasonable, the *Handbook* does not establish this as the minimum requirement for entry into the proffered position.

The *Handbook's* statement on the academic credentials of supervisory radiologic technologists does not establish that a baccalaureate degree in a specific specialty is a minimum requirement for entry into the occupation as a supervisor. It states that such a degree may be desirable, but does not indicate that it is required by employers. This statement could also be read to imply that an individual with a bachelor's or master's degree in a particular radiologic technology, such as nuclear medicine technology, diagnostic medical sonography, or cardio vascular technology could be a more desirable candidate for a supervisory position in a specialized field.

With regard to parallel positions in similar businesses, counsel provided no further information with regard to supervisory radiologic technologists in other hospitals similar to the petitioner. The petitioner did not provide documentation from professional associations or individuals in the industry as to whether a baccalaureate degree in a specific specialty is required for entry into the profession. The petitioner also did not provide sufficient 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).

occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In the initial petition, the petitioner did not indicate that a radiologic technologist license is required to perform the duties of the proffered position. Neither the petitioner nor counsel provided any information as to what the state of California required with regard to licensure for the position of supervisory radiologic technologist. On appeal, counsel asserts that the proffered position is purely supervisory and administrative in nature, and that the beneficiary is not required to perform any regulated activities. Counsel states that based on the job duties, the beneficiary is not required to possess a license to perform the duties of the proffered position. Counsel submits no further documentation to support his assertions, such as information from the state of California licensing authorities. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, the assertions of the director, as well as of counsel, do not constitute evidence. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). *Matter of Obaigbena*, 19 I&N Dec. 534 (BIA 1988). With regard to state licensure requirements for radiologic technologists, the 2004-2005 edition of the *Handbook* indicates that thirty-eight states and Puerto Rico now require licensure for such positions, and that states also offer registration for the same job classification. Nevertheless, the petitioner has not provided sufficient evidence to establish that the state of California does not require the beneficiary to possess a license to perform the duties of the position.

In addition, it is noted that the beneficiary studied radiologic technology at the Calayan Educational Foundation, Inc., Lucena City, The Philippines. There is no evidence in the record that this institution is affiliated with a university program, or is a university-level program of studies. Although Roberta Hopkins, Executive Director, Educational Evaluators International, Inc., Los Alamitos, California, stated that the beneficiary's studies are equivalent to a baccalaureate degree in radiologic technology from an accredited U.S. college or university, the evaluator provides no further information as to how she reached this conclusion. Without more persuasive evidence, the petitioner has not provided sufficient evidence to establish that the beneficiary does possess an equivalent U.S. university degree in radiologic technology.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation, or that the beneficiary is qualified to perform the duties of the proffered position. 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.