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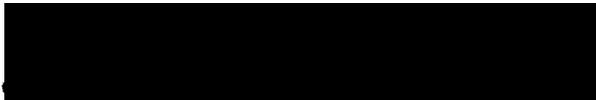


U.S. Citizenship  
and Immigration  
Services



FILE: EAC 02 177 51963 Office: VERMONT 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

Administrative Appeals Office  
VERMONT SERVICE CENTER  
MONTPELIER, VERMONT  
SEP 14 2002

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter was then appealed to the Administrative Appeals Office (AAO). According to the record, the service center received a timely Form I-290B on June 27, 2002, annotated as follows: "appeal copy-other one received 6-12 and not located. D. Prude." The AAO reviewed this I-290B form and sustained the petitioner's appeal on August 25, 2003.

The record also contains another Form I-290B appeal of the same director's decision that was received initially on June 12, 2002. The original date stamp on this form was crossed out and a second date stamp of August 6, 2002 was put on the form with no further explanation. This appeal is now before the AAO. The AAO, upon review of the materials in this appeal, dated June 12, 2002, finds no basis for reconsidering its August 25, 2003 decision to sustain the appeal. Accordingly the appeal remains sustained. The petition is approved.

The petitioner is curatorial program that seeks to employ the beneficiary as a development and residency program director. 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 he determined that the proffered position is not a specialty occupation.

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.

In the previous adjudication of this petition, the AAO found that the proffered position was a specialty occupation based on the fourth criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, that the nature of the duties was so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. None of the materials submitted in the original appeal change this determination.

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.

**ORDER:** The appeal is sustained. The petition is approved.