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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship
and Immigration
Services



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FILE: LIN 02 249 54424 Office: NEBRASKA SERVICE CENTER

Date: **SEP 30 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:
[Redacted]

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 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 family medical clinic and seeks to employ the beneficiary as a family medicine assistant. The petitioner 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, and because the beneficiary was a graduate of a foreign medical school coming to the United States to perform duties involving direct patient care in a medical profession, and did not satisfy the requirements of 8 C.F.R. § 214.2(h)(4)(viii). On appeal, counsel asserts that the director failed to properly identify the offered position.

The first issue to be discussed in this proceeding is whether the beneficiary must satisfy the requirements of 8 C.F.R. § 214.2(h)(4)(viii).

The regulation at 8 C.F.R. § 214.2(h)(4)(viii) applies only to aliens coming to the United States to work as physicians, and who will provide direct patient care, or to aliens who are physicians coming to teach or conduct research at or for a public or nonprofit private educational or research institution or agency and who will not be performing patient care. The regulation does not apply to foreign physicians seeking admission to the United States to perform services in some other capacity. The position offered to the beneficiary is not that of a physician. As such, the director's finding that the beneficiary is subject to the requirements of 8 C.F.R. § 214.2(h)(4)(viii) is incorrect and shall accordingly be withdrawn.

The second issue to be considered is whether the proffered position qualifies as a specialty occupation.

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), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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 proceedings 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) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a family medicine assistant. Evidence of the beneficiary's duties was set forth in the I-129 petition and the petitioner's letter of July 30, 2002. According to the evidence, the beneficiary would: perform basic physical examinations for a variety of patients; take and record patients' medical histories; and discuss with physicians the information obtained from patients and the beneficiary's personal observations. The petitioner requires a minimum of a bachelor's degree in such areas as pre-med or bio-medical science for entry into the offered position.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position fall within those listed for medical assistants. As noted in the *Handbook*, medical assistants may receive their training on the job, or in vocational-technical high schools, postsecondary vocational schools, community and junior colleges, and in colleges and universities. It is, therefore, apparent that a baccalaureate or higher degree in a specific specialty, or its equivalent, is not normally the minimum requirement for entry into the proffered position. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner does not assert that it has, in the past, required the services of individuals with a baccalaureate or higher degree in a specific specialty for the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Further, the

petitioner has failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations, and offers no evidence in that regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Finally, the duties of the offered position are routine for medical assistants. They are not so complex or unique that they can only be performed by individuals with a degree in a specific specialty. Nor are they so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations. The director's decision in that regard shall not be disturbed.

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.