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U.S. Citizenship
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FILE: SRC 01 073 50945 Office: TEXAS SERVICE CENTER

Date: FEB 07 2005

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 materials 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 on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a massage school. It seeks to employ the beneficiary as a vocational training instructor of anatomy and physiology and to classify him 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 initially denied the petition on the ground of abandonment, in accordance with 8 C.F.R. § 103.2(b)(13), for failure of the petitioner to respond to the request for additional evidence. The petitioner filed a motion to reopen or reconsider, along with documentary evidence that it had filed a timely response to the request for evidence. The petitioner's motion was granted and the director issued a second request for evidence, to which the petitioner responded. The petition was denied again, however, on the ground 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.

The record of proceeding before the AAO contains (1) Form I-129 and supporting documentation; (2) the director's requests for evidence (RFEs); (3) the petitioner's responses to the RFEs; (4) the two notices of decision; and (5) Form I-290B (the appeal). The AAO reviewed the record in its entirety before issuing its decision.

The petitioner, a massage school with five employees, is seeking to employ the beneficiary as an instructor of anatomy and physiology. In Form I-129 the petitioner indicated that the instruction would be performed in a classroom setting using books, overhead diagrams, a skeletal atlas, and videos. In response to the director's first RFE the petitioner explained that the anatomy and physiology instruction would be for the petitioner's staff at a college level. In response to the second RFE the petitioner stated that the beneficiary would be hired to teach not only anatomy and physiology, but health and hygiene as well. The petitioner acknowledged that no specific degree was required for the position, but asserted that training in anatomy and physiology was a necessity and the beneficiary had taken such courses in earning a dentistry degree (at the Autonomous University of Tamaulipas in Mexico). The petitioner contended that its prior instructor of anatomy and physiology had also taken courses in those disciplines (in earning a bachelor of science degree in biology at a U.S. university).

The director determined that the proffered position did not meet any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation.

On appeal the petitioner conceded that the instructor position at the massage school does not require a baccalaureate or higher degree. Thus, the position does not meet the first alternative criterion to qualify as a specialty occupation, under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate or higher degree is not the normal minimum requirement for entry into the position.

According to the petitioner, however, the position does meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) because the nature of the duties is so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. The record does not support this assertion. The petitioner has not submitted its curriculum, state requirements, or industry standards showing that massage schools in Texas must offer college-level instruction in anatomy and physiology. Nor is there any documentary evidence that the level of instruction at the school would be so advanced as to require the beneficiary to have at least a bachelor's degree in those areas. Accordingly, the record does not establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has not cited the second and third alternative criteria of a specialty occupation in its appeal. The record contains no evidence in any event that the proffered position qualifies as a specialty occupation under one of those criteria. The record does not show that a degree requirement in a specific specialty is common to the massage school industry in parallel positions among similar organizations. Nor does the record demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job. Thus, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In addition, the position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) because the petitioner clearly states that it does not normally require a degree in a specific specialty for the position, and there is no evidence that the petitioner normally requires the equivalent of such a degree. The previous instructor of anatomy and physiology at the massage school has a bachelor of science in biology, the petitioner indicates, while the

beneficiary's degree is in a different field – dental surgery. According to a Form I-129 attachment filed by the petitioner in January 2001, the beneficiary also has a bachelor's degree in psychology. Thus, the relevant credentials of each individual consist of a few courses in anatomy and physiology, not a degree program or its equivalent.

For the reasons discussed above, the record does not establish that the position proffered by the petitioner meets any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. Thus, the petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), and 8 C.F.R. § 214.2(h)(1)(ii)(B).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.