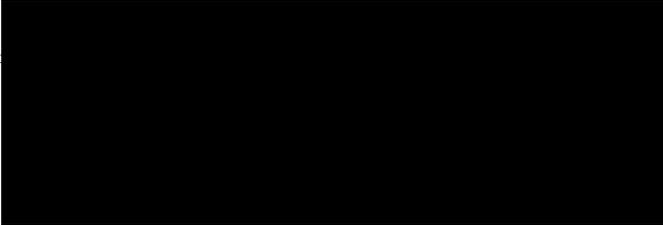


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FEB 10 2005

FILE: EAC 03 151 52768 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.

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 appeal will be dismissed. The petition will be denied.

The petitioner is a funeral home. In order to employ the beneficiary as an embalmer/mortician, 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 on the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation.

The AAO has determined that the director's decision to deny the petition was correct. The AAO based its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B with its attachment, and the petitioner's September 11, 2003 letter on appeal, with all the documents included therein.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation:

which [1] 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 [2] 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." (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The following fairly summarizes the proposed duties as presented in the record of this proceeding. Fifteen percent of the beneficiary’s work would be evenly divided among: (1) first-response actions upon death, family conferences, and transporting decedents to the funeral home; (2) pre-embalming preparation; and (3) setting features and pre-restorative procedures. Embalming would engage 50 percent of the beneficiary’s work time (and an additional 15 percent where autopsies or organ donation procedures are involved). The beneficiary would equally spend twenty percent of her time on post-embalming procedures (such as readjusting restorative work, building and reconstructing features, applying cosmetics, and dressing and casketing decedents) and funeral-direction duties (such as making funeral arrangements, supervising visitation, and conducting funerals).

The petitioner asserts that the proffered position and its associated duties require expertise that can only be acquired by an experienced graduate of a mortuary science college. However, the documentary evidence submitted by the petitioner indicates that study at such institutions usually culminates in an associate’s degree, not a bachelor’s degree as required by the sections of the Act and CIS regulations on H-1B specialty occupation requirements. The Department of Labor’s *Occupational Outlook Handbook (Handbook)*, which CIS recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations, also indicates that the proffered position is one that normally does not require a bachelor’s degree or its equivalent. The *Handbook* indicates that the 50 mortuary science programs accredited by the American Board of

Funeral Service Education (ABFSE) range from two to four years of college-level study, and the article "Where Will We Find Tomorrow's Funeral Directors," which the petitioner submits on appeal, states that the educational standard approved by the ABFSE for mortuary science programs is "an associate degree program" (first page of the article), and that "80 percent of the institutions accredited by the ABFSE are either trade schools or community colleges" (second page of the article). Also, the National Funeral Director's Association document on state licensing requirements, which the petitioner provided in response to the RFE, indicates that none of the States requires a bachelor's degree in mortuary science or any other specialty in order to qualify for licensing as an embalmer or funeral director.

The totality of the evidence of record indicates that the proffered position is not one that normally requires at least a bachelor's degree or the equivalent in a specific specialty. Also, the record does not establish an industry-wide requirement for such a degree for positions parallel to the one proffered here: in fact, in its reply to the RFE, the petitioner identified "a two year degree" as the requisite educational credential. The evidence does not distinguish the position as unique from or more complex than similar positions that the *Handbook* and documents in the record indicate are usually performed by individuals with less than a bachelor's degree. The record does not depict specific duties so specialized and complex as to require knowledge that is usually associated with a baccalaureate or higher degree in a specific specialty. Finally, the petitioner has not established that it has normally required at least a bachelor's degree, or its equivalent, in a specific specialty. In fact, the copy of the employment advertisement that the petitioner placed in *The Virgin Islands Daily News* establishes that the petitioner considered an "[a]ssociate degree from an accredited mortuary science college" to be sufficient. Therefore, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's decision 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. Accordingly, the appeal will be dismissed.

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