

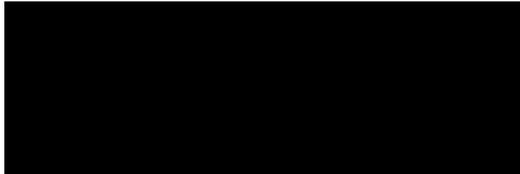


U.S. Citizenship
and Immigration
Services

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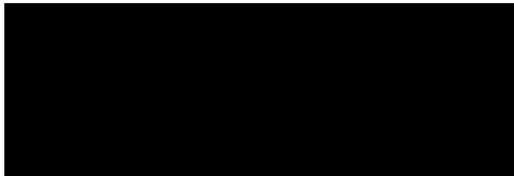


FILE: LIN 03 193 50759 Office: NEBRASKA SERVICE CENTER Date: OCT 28 2005

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:



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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is an educational conference management company that organizes and presents medical educational programs. It seeks to employ the beneficiary as a medical researcher. 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 does not qualify as a specialty occupation. On appeal counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of 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 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 proceeding before the AAO contains: (1) the 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a medical researcher. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

80 per cent of the time

- Research medical topics;
- Perform background checks on scientific data;
- Perform background checks on lecturers; and
- Assist with academic programs as they relate to new medical research.

20 per cent of the time

- Call speakers to perform due diligence; and
- Perform clerical and administrative work.

The petitioner does not state that it requires a degree in any particular specialty for entry into the proffered position, but finds the beneficiary qualified by virtue of her Bachelor of Science degree with a major in chemistry, and minor in biology.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. 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, though vaguely described, are essentially those noted for meeting and convention planners with additional medical research and writing responsibilities. The petitioner plans and schedules medical conferences while providing training manuals, educational materials, and seminar packages. The *Handbook* does not indicate that the duties of convention planners and researchers/writers as described, require a baccalaureate level education in any specific specialty. Degrees in a variety of educational disciplines will equip an individual to work in these fields. The petitioner has, therefore, failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petitioner has established, however, that the duties of the offered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In addition to clerical and administrative duties associated with conference/seminar planning, the beneficiary will be required to prepare seminar materials and training manuals dealing with various medical issues (i.e. anti-aging medicine). The preparation of these materials will require the beneficiary to review specific materials verifying the statements and research that the presenter will rely upon to make his or her presentation. The beneficiary will perform background checks on scientific data and assist with the preparation of academic programs as they relate to medical research. The duties of the proffered position meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) and the position qualifies as a specialty occupation.

The final issue to be considered is whether the beneficiary qualifies to perform the duties of a specialty occupation. The beneficiary holds a Bachelor of Science degree with a major in chemistry and minor in biology from an accredited university in the United States, and her degree is closely related to duties of the offered position. She is, therefore, qualified to perform the duties of the offered specialty. 8 C.F.R. § 214.2(h)(4)(iii)(C)(I).

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.