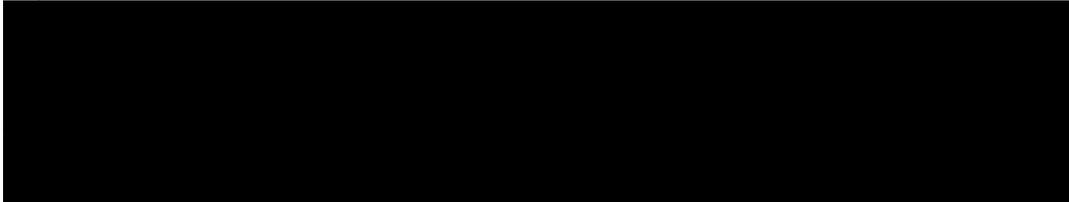


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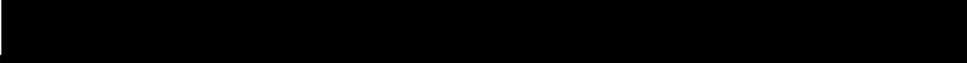
U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 04 232 54307 Office: CALIFORNIA SERVICE CENTER Date: **AUG 15 2006**

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:



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, Chief  
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 sustained. The petition will be approved.

The petitioner is an adult day health care center that seeks to employ the beneficiary as a program associate. 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 on the ground that the proffered position is not a specialty occupation. Counsel submits a timely appeal.

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 director found that a bona fide position of program associate (psychologist) requires the beneficiary to have a baccalaureate degree. However, the director did not find that the petitioner demonstrated a reasonable and credible offer of employment. The director referred to a previously approved petition submitted on behalf of another beneficiary and found inconsistencies in that record relating to the wages paid by the

petitioner to that beneficiary. According to the director, the petitioner failed to pay the beneficiary in that petition the full wage she was entitled to as stated in the Form I-129 petition and Labor Condition Application (LCA) filed in conjunction with the petition or was not employed for the number of hours specified in the petition. As a result of these findings, the director found that the petitioner misrepresented information in the Form I-129 petition and the LCA, and as a result of this he could not determine the authenticity of the position which is offered here.

On appeal, counsel states that the beneficiary in the previously approved petition was paid the proper wage of \$17.50 per hour in accordance with the petition and LCA. Counsel asserts that the I-129 petition indicated that the beneficiary would work 25 to 30 hours a week, thereby earning \$22,750 to \$27,300 annually. Counsel submits a copy of the previously approved H-1B petition, medical documentation relating to the beneficiary's child, and a letter from the beneficiary stating that he voluntarily reduced his hours of work to care for his child.

In the denial, the director discussed his concern about the wage paid to another beneficiary in a previously approved petition. The regulation at 8 C.F.R. § 214.2(h)(i)(II)(A) addresses this issue. It states in part that a petitioner shall immediately notify CIS of any changes in the terms and conditions of employment of a beneficiary which may affect the beneficiary's eligibility under Section 101(a)(15)(H) of the Act. Pursuant to 8 C.F.R. § 214.2(h)(2)(i)(E), a petitioner must file an amended petition to reflect any material change in the terms and conditions of an alien's employment. A material change is a change that directly impacts the alien's continued eligibility for H-1B classification. In this instance, the only change that occurred was a reduction in the hours that the beneficiary worked. The submitted letter from the beneficiary of the previously approved petition indicated that the beneficiary requested a reduction in the hours that he worked in order to care for his child, and the petitioner submitted into the record hospital records relating to the child. The petitioner's undated letter indicated that it continued to pay the beneficiary \$17.50 per hour. Based on the evidence in the record, a reduction in the hours worked by the beneficiary does not constitute a material change in the terms and conditions of employment. Thus, the AAO finds that there are no inconsistencies in the evidence relating to the wages paid to the beneficiary in the previously approved petition.

Upon review of the record, the petitioner has established that it will employ the beneficiary in a specialty occupation.

The AAO concurs with the director's conclusion that the proposed position of program associate qualifies as a specialty occupation.

The AAO will now address whether the beneficiary is qualified to perform the duties of the offered position, which involves assisting the program director. The petitioner asserts that the position requires a bachelor's degree in social ecology.

The record contains the beneficiary's degree in social ecology (with a major in psychology) from the University of California, Los Angeles. Based on this evidence, the AAO finds that the beneficiary is qualified to perform the duties of the proposed position.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

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.