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U.S. Citizenship
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FILE: EAC 05 002 54112 Office: VERMONT SERVICE CENTER Date: **AUG 29 2006**

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 sustained. The petition will be approved.

The petitioner is a medical testing laboratory. It seeks to employ the beneficiary as a medical technologist and to classify her 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 grounds that the record failed to establish that the beneficiary has been certified as a medical technologist by an approved credentialing organization or that she has been licensed by the intended state of employment, Virginia, to practice as a medical technologist.

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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform the services of a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In its initial submission, including the Form I-129 and an accompanying letter, the petitioner described itself as a medical testing laboratory, established in 1996, with approximately 30,000 employees and gross annual income of \$727 million. The petitioner stated the beneficiary's employment with the company as a medical technologist began in October 2002 in TN-1 status, and that it now wished to employ the beneficiary in H-1B status for three years at an annual salary of \$37,128. A job description submitted with the petition describes the duties of the medical technologist position as follows:

Will perform tests requiring the use of independent judgement and responsibility in those specialties in which qualified by education, training and experience. Will be responsible for assuring that a given test system is operated in accordance with the laboratory's procedure manual and that the applicable quality control requirements are met. Other duties include: inform supervisory personnel of all problems associated with proper performance of test procedures and quality control; troubleshooting or identifying problems relating to assays or instrumentations and informing supervisor quickly of problems that cannot be resolved; produce accurate and precise test results; meet realistic standards in relation to quality of work performed to meet the turn-around time; identify abnormal results or cells and bring to

the attention of a supervisor or senior personnel; support and comply with all laboratory policies and procedures; maintain laboratory areas and equipment in a safe and functional manner; ensure quality control values are within range for each test system.

Also submitted with the petition was the beneficiary's curriculum vitae, which lists the medical testing the beneficiary has performed since beginning work for the petitioner in October 2002, as follows:

- Perform serologic agglutination tests (*i.e.* Heterophile, RPR, VDRL, Febrile testing, cold agglutination, monostest)
- Set and read fungal antibody determination using immunodiffusion and complement fixation technique.
- Perform Western Blot testing for HIV 1, HIV 2, HTLV I/II, using Autoblots Machine, and read the blot.
- Perform tests for determination of serum antibodies using enzyme immunoassay (EIA) like Herpes I/II IgG, H. pylori IgG, IgM, Rubella IgG, Mumps IgG, Mumps IgG, IgM, Brucella IgG, IgM, Legionella pneumophila IgG, nuclear matrix protein (NMP22), circulating immune complexes (C1Q, C3b, C3d), and Coccidioides IgG.

The proffered position requires a bachelor's degree in laboratory science, the petitioner declares, and one year of professional experience. Documentation submitted with the petition includes copies of the beneficiary's educational degree and transcript showing that she graduated from Saint Louis University in Baguio City, the Philippines, with a bachelor of science in medical technology on May 7, 1990; the aforementioned curriculum vitae listing the beneficiary's experience as a medical technologist since 1990; and a photocopy of the beneficiary's certification as a medical technologist by the Registry of the American Medical Technologists.

In the RFE the director requested the petitioner to submit evidence that the beneficiary has a state license to practice medical technology in Virginia, or evidence that no license is required, as well as evidence that the beneficiary has been certified as a medical technologist by the Commission on Graduates of Foreign Nursing Schools (CGFNS), the credentialing organization approved by the Attorney General for foreign health-care workers under section 212(a)(5)(C) of the Act.

In response to the RFE the petitioner provided evidence that the beneficiary had applied to CGFNS for certification, but had not yet been approved. The petitioner did not respond to the RFE's request for evidence of the beneficiary's license status in Virginia.

In his decision the director noted that the beneficiary had had not yet been certified by CGFNS, in accordance with section 212(a)(5)(C) of the Act, and determined that she was therefore ineligible to enter the United States and immediately engage in employment as a medical technologist. The director also noted that the petitioner had presented no evidence of the beneficiary's state licensure to practice medical technology in Virginia, and determined that she was ineligible for H-1B classification on this ground as well.

On appeal counsel has submitted an internet printout on "Clinical Laboratory Technicians and Technologists" from a website sponsored by the Virginia Department of Education entitled "Career Prospects in Virginia" which states that "Virginia does not require clinical laboratory technologists and technicians to be licensed." Counsel has also submitted a copy of a certificate issued to the beneficiary on April 29, 2006 by a division of CGFNS, the International Commission on Healthcare Professions, certifying that she has met all the

requirements of section 212(a)(5)(C) of the Act for the profession of clinical laboratory scientist. Based on the foregoing documentation, the AAO determines that the petitioner has overcome the grounds for the director's denial of the petition. The director's decision will therefore be withdrawn.

The AAO will review the evidence of record to determine whether the proffered position is a specialty occupation and whether the beneficiary is qualified to perform services in the occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F.Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

Based on the petitioner's description of the proffered position's duties and the beneficiary's description in her curriculum vitae of the medical testing she has performed since being hired by the petitioner in October 2002, the AAO determines that the proffered position accords with the *Handbook's* description of a clinical laboratory technologist. The occupation is described as follows in the *Handbook*, 2006-07 edition, at 318:

Clinical laboratory personnel examine and analyze body fluids, and cells. They look for bacteria, parasites, and other microorganisms; analyze the chemical content of fluids; match blood for transfusions; and test for drug levels in the blood to show how a patient is responding to treatment. Technologists also prepare specimens for examination, count cells, and look for abnormal cells in blood and body fluids. They use automated equipment and computerized instruments capable of performing a number of tests simultaneously, as well as microscopes, cell counters, and other sophisticated laboratory equipment. Then they analyze the results and relay them to physicians

Clinical laboratory technologists perform complex chemical, biological, hematological, immunologic, microscopic, and bacteriological tests. Technologists microscopically examine blood, tissue, and other body fluids. They make cultures of body fluid and tissue samples, to determine the presence of bacteria, fungi, parasites, or other microorganisms. Clinical laboratory technologists analyze samples for chemical content or a chemical reaction and determine concentrations of compounds such as blood glucose and cholesterol levels. They also type and cross match blood samples for transfusions.

Clinical laboratory technologists evaluate test results, develop and modify procedures, and establish and monitor programs, to ensure the accuracy of tests. Some technologists supervise clinical laboratory technicians.

With respect to the educational requirements for clinical laboratory technologists, the *Handbook* states the following:

The usual requirement for an entry-level position as a clinical laboratory technologist is a bachelor's degree with a major in medical technology or in one of the life sciences; although it is possible to qualify through a combination of education, on-the-job, and specialized training. Universities and hospitals offer medical technology programs.

Id. at 319. In view of the foregoing information, the AAO concludes that the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Based on all the evidence of record, however, the AAO determines that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specialty, which qualifies the position as a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(4).

As previously discussed, the documentation of record shows that the beneficiary graduated from Saint Louis University in Baguio City, the Philippines, with a bachelor of science in medical technology on May 7, 1990. The record also includes a report from an educational credentials evaluation service in New York which declares that the beneficiary's education is equivalent to a bachelor's degree in medical technology from an accredited U.S. college or university. The AAO concludes that the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) to perform services in the specialty occupation.

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform services in the specialty occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the AAO will sustain the appeal and approve the petition.

ORDER: The appeal is sustained. The petition is approved.