



U.S. Citizenship
and Immigration
Services

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D.L.

FILE: EAC 04 070 51091 Office: VERMONT SERVICE CENTER Date: JUN 01 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. Wiedmann, Chief
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 dismissed. The petition will be denied.

The petitioner is a chiropractic physician and seeks to employ the beneficiary as a chiropractor assistant. 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 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 chiropractor assistant. Evidence of the beneficiary’s duties includes the Form I-129 petition and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would: under the direction and supervision of the petitioner, manage therapeutic modalities on patients, e.g. exercise, ultrasound, electro galvanic therapy, in connection with the treatment of musculoskeletal conditions of the spinal column and extremities caused by neurological and kinetic articular dysfunctions.

The petitioner does not state that it requires a degree in a specific specialty for entry into the proffered position. It finds the beneficiary qualified for the position, however, by virtue of his foreign education which has been evaluated by a credentials evaluation service and found equivalent to a first professional degree in physical therapy awarded by an accredited college or university in the United States.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position fall within those noted for medical assistants. Medical assistants perform routine administrative and clinical tasks to keep the offices of physicians, podiatrists, chiropractors, and other health practitioners running smoothly. The duties vary from office to office, depending on the location and size of the practice and the practitioner’s specialty. In small practices, medical assistants usually are “generalists,” handling both administrative and clinical duties. Those in large practices tend to specialize in a particular area. For example, ophthalmic medical assistants help

ophthalmologists provide care. They conduct diagnostic tests, measure and record vision, and test eye muscle function. They may maintain optical and surgical instruments and assist the ophthalmologist in surgery. These duties are similar in function to those to be performed by the beneficiary in that the petitioner will assist the petitioner in providing patient care, such as providing ultrasound and electro galvanic therapy. The duties are also similar to those performed by physical therapist assistants and aides working under the direction of a physical therapist. Physical therapist assistants aid patients in performing exercises. They also give massages and perform electrical stimulation. The *Handbook* states that most employers of medical assistants prefer graduates of formal programs in medical assisting. Such programs are offered in vocational-technical high schools, postsecondary vocational schools, and community and junior colleges. Post secondary programs usually last one year, resulting in a certificate or diploma, or two years, resulting in an associate degree. Physical therapy assistants are trained on the job, but typically earn an associate degree from an accredited physical therapist assistant program. A baccalaureate level education in a specific specialty is not required to perform the duties of the offered position. The petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations, or that it normally requires a degree in a specific specialty for entry into the offered position, and offers no evidence in this regard. The petitioner has failed to establish the referenced regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties are routine for the position in the industry. The petitioner has failed to establish the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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