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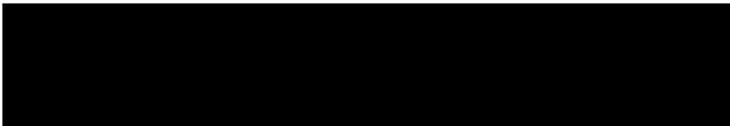
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APR 04 2007

FILE: WAC 05 020 50222 Office: CALIFORNIA 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:



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 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 provider of emergency medical services that seeks to employ the beneficiary as an emergency medical services coordinator. 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, the petitioner 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 an emergency medical coordinator. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Manage and coordinate all aspects of the EMS division of the company; coordinate B.L.S. and C.C.T. and set up a successful E.M.S. system to meet the needs of the company and community; perform and coordinate weekly and mandatory monthly in-service meetings and training to ensure that the E.M.S. crews maintain state, county and company policy, procedures, and regulation updates and skills performances; institute and coordinate Infection Control Policy/Procedure/Regulation/Protocol updates;
- Be assigned to an emergency response vehicle/ambulance; provide basic, advanced and critical care life support to the acute and chronically ill and injured; maintain scene control on all scenes and initiate transport to the desired emergency room or closest emergency facility; complete all relevant documents, patient care reports, county and state forms, and billing documents;
- Be thoroughly familiar and in close contact with the California and Sacramento E.M.S. regulations; maintain strict adherence of all the ambulances and E.M.S. personnel to the standards and regulations set forth by the California State E.M.S. Authority, Sacramento County E.M.S. Agency, and the California Highway Patrol; adopt, perform, and initiate a quality improvement and assurance program, according to California State and Sacramento County E.M.S. agency regulations; communicate with the California State E.M.S. Authority and Sacramento County E.M.S. Agency on any updates, policy changes, employee certification status, ambulance supplies, and patient care issues when necessary; attend all county E.M.S. Operational Oversight Committee meetings and mandatory state E.M.S. meetings;
- Supervise and manage, on average, 15 employees, including both full time and part time E.M.S. personnel; maintain strict records of E.M.S. staff personnel and assignments, including current

certifications, accreditations, licenses and work status; assist with the interview, orientation, evaluation and hiring of new employees; familiarize new employees with company policies and procedures, including field orientation; perform and evaluate employee driving abilities of an emergency vehicle; instruct, educate, evaluate and monitor E.M.S. personnel, including first aid, basic life support, intermediate life support, advanced life support students, and new employees, including the following education courses: CPR, advanced cardiac life support, pediatric advanced life support, pre-hospital trauma life support, emergency vehicle operations, including all skills assessments; and

- Schedule employees to staff the various emergency and non-emergency vehicles, including calling in overtime crew as needed; assign daily rosters to field crews for duties to be performed at the base station; ensure field crews arrive in the correct uniform attire, clean, and presentable, including spot checks, thereby maintaining a professional environment; check supplies and equipment, maintain equipment, restock and order additional supplies when necessary, including maintaining an inventory of all current supplies.

The petitioner finds the beneficiary to be qualified for the proffered position by virtue of his foreign education and past work experience which has been determined by credentials evaluation evaluators to be equivalent to a bachelor of science degree in emergency medical services.

The AAO routinely consults the 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 fall within those noted for emergency medical technicians (EMT) and paramedics. Formal training and certification is needed to become an EMT or paramedic. All 50 states have a certification procedure. In most States and the District of Columbia, registration with the NREMT is required at some or all levels of certification. The most advanced level of training for this occupation is EMT-Paramedic. At this level, the caregiver receives additional training in body function and learns more advanced skills. The Technology program usually lasts up to two years and results in an associate degree in applied science. Advancement beyond the EMT-Paramedic level usually means leaving fieldwork. An EMT-Paramedic can become (as in this instance) a supervisor, operations manager, administrative director, or executive director of emergency services. A baccalaureate level education in a specific discipline, however, is not required for any of the named positions. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner states that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations, and in support of that assertion provides copies of job advertisements. The job advertisements provided, however, do not establish the petitioner's assertion. None of the advertisements are from organizations similar in nature and scope to that of the petitioner. Of the advertisements submitted by the petitioner which do require degrees (including advertisements from health care organizations, municipalities, and educational institutions, none of which are similar to the petitioner), the following degrees are found to be suitable: health care; nursing; life sciences; education; non-specified degrees with course work in EMS, risk management, business administration, or a related field; a master's degree in psychology, social work, or psychiatric nursing; a doctorate in psychology; a master's degree in EMS, business, fire science, emergency medicine, public health, or public administration. The wide spectrum

of acceptable academic concentrations is indicative of a lack of a common requirement for a degree in a specific specialty. The petitioner also submitted an employment letter from the administrator of American Medical Response, the beneficiary's previous employer, which details the duties performed by the beneficiary on its behalf. The letter does not, however, state that a bachelor's degree in a specific discipline was required of the beneficiary for entry into the position. The documentation submitted does not satisfy the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not state that it normally requires a degree in a specific specialty for entry into the proffered position as the position is new with the company, and accordingly, offers no evidence in this regard. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not establish that the duties to be performed by the beneficiary are 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 does the record establish that the duties are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. As described by the petitioner, the duties are routine for EMTs or paramedics who have left field work and moved into the management or administrative side of the petitioner's business.

The petitioner also asserts that a previous agency decision has classified the offered position as a specialty occupation. This reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire record of proceeding in the petition referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. 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 specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as an emergency medical services coordinator. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error and a violation of 8 C.F.R. § 214.2 paragraph (h).

The petitioner has failed to establish the referenced 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.