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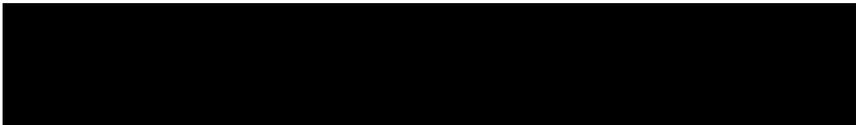
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FILE: LIN 04 264 51789 Office: NEBRASKA SERVICE CENTER Date: **FEB 26 2007**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 licensed as a private school in Wisconsin and dedicated to the conducting of research and training of practitioners of traditional Chinese medicine, including TuiNa (Chinese medical massage), and seeks to employ the beneficiary as an instructor in Traditional Chinese Medicine. 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 an instructor of traditional Chinese medicine. 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 teach the fundamentals of TuiNa techniques, clinical anatomy and physiology, Theory of Eastern Medicine, Acupressure Accessory Techniques and other courses related to the theory of traditional Chinese medicine.

The petitioner finds the beneficiary qualified for the duties of the proffered position by virtue of his foreign education which has been found by a credentials evaluation service to be equivalent to a bachelor's degree in traditional Chinese medicine from an accredited college or university in the United States.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. A review of the petitioner's catalog for 2004 – 2005 (Entitled *Massage School Catalog 2004 – 2005*) indicates that the petitioner's purpose is to assist students in broadening their knowledge of diverse massage techniques available and to teach students to compliment modern Western medical knowledge with traditional Eastern techniques. The petitioner believes that the demand for massage therapy will increase in the future, and offers employment advisory services for its graduates and ongoing job postings noting that students will be able to pursue the following types of employment opportunities: acupuncture clinics; rehabilitation centers; chiropractic offices; complementary centers in hospitals; therapy clinics; sports medicine groups; hospice care; airports; nursing homes; spas; cruise ships; on-site companies; hotels; and private practice. The position to be occupied by the beneficiary will require the teaching of TuiNa (Chinese medical massage) to massage students. The purpose of the teaching is to provide instruction for occupations that require specialized

training, but not a four-year baccalaureate degree.¹ As such, the duties of the proffered position fall within those noted for postsecondary teachers in a vocational or technical setting. The *Handbook* notes that educational requirements for teachers are generally the highest at 4-year research universities, while experience and expertise in a related occupation is the principal qualification at career and technical institutes. The petitioner would be classified as a career or technical institution that offers training for massage therapists. The duties of the proffered position, taking into account the nature of the petitioner's business operation, do not normally require a baccalaureate or higher degree as a minimum requirement for entry into the offered position. 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 degree requirement is common to the industry in parallel positions among similar organizations, and in support of that assertion submits the following: an opinion letter from [REDACTED] managing editor of the bi-monthly journal *Alternative & Complementary Therapies (A&CT)*; a copy of "A Message from the President" from the Colorado School of Traditional Chinese Medicine; an article written by the petitioner's counsel for the *AILA Occupational Guidebook* entitled "MAINSTREAMING THE ALTERNATIVE: AN OUTLINE OF IMMIGRATION ISSUES AND OPPORTUNITIES IN COMPLEMENTARY AND ALTERNATIVE HEALTH CARE;" [REDACTED] states that massage therapy "is well on its way to becoming a recognized profession," and states that a teacher of Chinese massage therapy mandates the teacher's possession of at least a bachelor's degree or another professional degree in Chinese medicine or a related field. She does not however, provide any basis for her opinion, such as a labor market survey or reference to any other authoritative publication documenting the educational requirements for practitioners or teachers of the offered position. Her opinion, therefore, is of little evidentiary value. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Likewise, neither the Colorado School of Traditional Chinese Medicine's "A Message from the President" nor the article written by [REDACTED] establish a degree requirement for the proffered position in the industry. The petitioner has failed to establish 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 the proffered position and 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. There is nothing in the record to establish that the duties are any more specialized, complex or unique than those normally performed in the industry by individuals teaching massage therapy at career or technical institutes. The record does not establish that instruction of TuiNa (Chinese medical massage) in the State of Wisconsin requires a four year degree in a specific specialty. The petitioner has failed to establish the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

¹ The State of Wisconsin requires requires 600 classroom hours of study in a course of instruction at an approved school in order to become credentialed in massage therapy. <http://drl.wi.gov/prof/mass>

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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.