

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D2

FILE: EAC 06 033 52069 Office: VERMONT SERVICE CENTER

Date: SEP 13 2007

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:

SELF-REPRESENTED

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 sustained. The petition will be approved.

The petitioner is a medical school and research facility that seeks to employ the beneficiary as a research technician. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 petitioner had not demonstrated that the beneficiary is qualified to perform a specialty occupation. On appeal, the petitioner submits a copy of the beneficiary's college diploma and a translation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

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

- (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) 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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a research technician. The petitioner indicated that the beneficiary is a qualified candidate for the job because she possesses a foreign bachelor's degree in biology and medical laboratory studies.

The director found that the beneficiary was not qualified for the proffered position because the petitioner did not submit a copy of the beneficiary's diploma/HBO.

In this case, the proffered position is that of a research technician for the petitioning entity, which is a non-profit medical school and research facility that was established in 1954, has 1,700 employees and 3,500 faculty members. A review of the Department of Labor's *Occupational Outlook Handbook*, 2006-07 edition, under the category of Science Technicians, finds that although there are several ways to qualify for a job as a science technician/biological technician, employers' preferences vary, and some science technicians hold a bachelor's degree in chemistry, biology, or forensic science, or have taken several science and math courses at 4-year colleges. In this case, the beneficiary holds a foreign bachelor's degree in biology and medical laboratory studies. An evaluator from the Netherlands Organization for International Cooperation in Higher Education (Nuffic) concludes that the beneficiary's foreign degree is comparable to a bachelor's degree in laboratory technology awarded by American colleges and universities.

The AAO notes that not all science technician/biological technician positions require a related bachelor's degree, or the equivalent. In the context of the record of this particular proceeding, however, the cumulative weight of the details that the petitioner presented about the proposed duties and the size and scope of its business operations are decisive. It is sufficient to establish that the nature of the duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of at least a U.S. bachelor's degree, or the equivalent, in chemistry, biology, forensic science, or a related specialty. Therefore, the petitioner has satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As the evidence of record also establishes that the beneficiary holds the equivalent of a U.S. bachelor's degree in laboratory technology, which is a degree directly related to the pertinent specialty occupation, the beneficiary is qualified to serve in that occupation as required by the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The appeal will be sustained, and the petition will be approved.

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. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained, and the petition is approved.