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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

D2

[redacted]

FILE: SRC 03 212 54278 Office: TEXAS SERVICE CENTER Date: JAN 03 2005

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

Laurie E. O'Byron

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 medical office specializing in cardiology. In order to employ the beneficiary as a nuclear medicine technologist, 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 on the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation. While acknowledging that the petitioner was proffering a nuclear medicine technologist position, the director found that petitioner did not establish that the position satisfies any specialty occupation criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the director "placed undue emphasis" upon and "applied mechanically" the Department of Labor's *Occupational Outlook Handbook (Handbook).* Counsel also contends that the proffered position is a specialty occupation by virtue of Texas licensing or certification requirements for nuclear medicine technologists and the specialized courses that a person must complete for certification. Counsel further argues that the proffered position is a specialty occupation by virtue of its "attendant advanced and sophisticated duties." As an alternate ground for petition approval, counsel maintains that, if the position of nuclear medicine technologist has not yet been recognized as a specialty occupation, it is at a sufficiently advanced stage of transition to that level to merit such recognition.

The director's decision to deny the petition was correct. The AAO based this conclusion upon consideration of the entire record of proceeding before it, including: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the matters that counsel submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, counsel's brief, and the documentary exhibits appended to the brief.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184 (i)(l), 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] 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 [2] 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." (Italics added.)

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) has consistently interpreted 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. Applying this standard, 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 specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The proffered duties are described as follows in counsel's letter of reply to the RFE (at page 3):

- Review physicians' orders and patients' records to determine when procedures are required.

- Prepare radiopharmaceuticals, calculate correct dosages, and administer treatment to patients.
- Explain procedure to patients.
- Position and adjust equipment over the body area to be studied and operate the imaging systems.
- Perform laboratory tests on body specimens using radioactive substances.
- Use quality control techniques to ensure pharmaceutical quality and efficient and effective operation of equipment.
- Perform research and/or administrative duties.
- Use protective lead shielding and constantly monitor the laboratory with radiation detectors to help safeguard the work surroundings.

The AAO found that, as described in the record, the proffered position and its duties substantially comport with the occupation of nuclear medicine technologist as it is described in the current, 2004-2005 edition of the *Handbook*. This excerpt from pages 324-325 is demonstrative:

> Diagnostic imaging embraces several procedures that aid in diagnosing ailments, the most familiar being the x ray. Another increasingly common diagnostic imaging method, called magnetic resonance imaging (MRI), uses giant magnets and radio waves, rather than radiation, to create an image. Not all imaging technologies use ionizing radiation or radio waves, however: In nuclear medicine, radionuclides—unstable atoms that emit radiation spontaneously—are used to diagnose and treat disease. Radionuclides are purified and compounded to form radiopharmaceuticals. Nuclear medicine technologists administer radiopharmaceuticals to patients and then monitor the characteristics and functions of tissues or organs in which the drugs localize. Abnormal areas show higher- or lower-than-expected concentrations of radioactivity.
>
> Nuclear medicine technologists operate cameras that detect and map the radioactive drug in a patient's body to create diagnostic images. After explaining test procedures to patients, technologists prepare a dosage of the radiopharmaceutical and administer it by mouth, injection, or other means. They position patients and start a gamma scintillation camera, or "scanner," which creates images of the distribution of a radiopharmaceutical as it localizes in, and emits signals from, the patient's body. The images are produced on a computer screen or on film for a physician to interpret.

> When preparing radiopharmaceuticals, technologists adhere to safety standards that keep the radiation dose to workers and patients as low as possible. Technologists keep patient records and record the amount and type of radionuclides received, used, and discarded.
>
> . . . .
>
> Nuclear medicine technologists also perform radioimmunoassay studies that assess the behavior of a radioactive substance inside the body. For example, technologists may add radioactive substances to blood or serum to determine levels of hormones or of therapeutic drugs in the body. Some nuclear medicine studies, such as cardiac function studies, are processed with the aid of a computer.

The AAO accords great weight to the *Handbook's* information, as it recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. As reflected in this excerpt from page 325-326 of the 2004-2005 edition, the *Handbook* clearly indicates that nuclear medicine technologist positions do not normally require a baccalaureate or higher degree, or the equivalent, in a specific specialty:

> Many employers and an increasing number of States require certification or licensure. Aspiring nuclear medicine technologists should check the requirements for the State in which they plan to work. Certification is available from the American Registry of Radiologic Technologists and from the Nuclear Medicine Technology Certification Board [NMTCB]. Nuclear medicine technologists must meet the minimum Federal standards on the administration of radioactive drugs and the operation of radiation detection equipment.
>
> Nuclear medicine technology programs range in length from 1 to 4 years and lead to a certificate, associate degree, or bachelor's degree. Generally, certificate programs are offered in hospitals, associate degree programs in community colleges, and bachelor's degree programs in 4-year colleges and universities. Courses cover the physical sciences, biological effects of radiation exposure, radiation protection and procedures, the use of radiopharmaceuticals, imaging techniques, and computer applications.
>
> One-year certificate programs are for health professionals—especially radiologic technologists and diagnostic medical sonographers—who wish to specialize in nuclear medicine. They also attract medical technologists, registered nurses, and others who wish to change fields or specialize. Others interested in the nuclear medicine technology field have three options: a 2-year certificate program, a 2-year associate degree program, or a 4-year bachelor's degree program.
>
> The Joint Review Committee on Education Programs in Nuclear Medicine Technology accredits most formal training programs in nuclear medicine technology. In 2002, there were 92 accredited programs in the continental United States and Puerto Rico.

> Nuclear medicine technologists should be sensitive to patients' physical and psychological needs. They must pay attention to detail, follow instructions, and work as part of a team. In addition, operating complicated equipment requires mechanical ability and manual dexterity.
>
> Technologists may advance to supervisor, then to chief technologist, and, finally, to department administrator or director. Some technologists specialize in a clinical area such as nuclear cardiology or computer analysis or leave patient care to take positions in research laboratories. Some become instructors or directors in nuclear medicine technology programs, a step that usually requires a bachelor's or master's degree in nuclear medicine technology. Others leave the occupation to work as sales or training representatives for medical equipment and radiopharmaceutical manufacturing firms or as radiation safety officers in regulatory agencies or hospitals.

Counsel's argument to the effect that Texas's regulatory requirements elevate the proffered position to a specialty occupation is without merit. The documents submitted in the record are consistent with the *Handbook's* information that employers do not normally require at least a bachelor's degree or its equivalent for positions like the one proffered here. Paragraph D of the excerpt submitted at Appellate Exhibit B from the Texas Bureau of Radiation Control's *Regulatory Guide 3.1 (Guide for the Preparation of License Applications for the Medical Use of Radioactive Material)* suggests that the "the minimum training for technologists handling diagnostic radiopharmaceutical [material]" includes certification as "a general certificate medical radiologic technologist (MRT) under Texas Civil Statutes, Article 4512m" and fulfillment of one of seven other listed criterea. The record contains no copy of the aforementioned Article 4512m and no secondary descriptive sources to indicate that the Article conditions MRT certification upon the attainment of a bachelor's degree, or its equivalent, in a specific specialty. It is noted that the additional qualifying criterion listed at subparagraph 1 of the *Guide's* paragraph D is certification by NMTCB. The following excerpt from that Board's Internet cite clearly shows this certification does not require a bachelor's degree or its equivalent in a specific specialty:

> ◆ **NMTCB ELIGIBILITY REQUIREMENTS**
>
> A candidate for examination must show documented evidence of one of the following:
>
> I. Completion of a NMTCB recognized nuclear medicine technology program[.]
>
> II. Completion of a certificate, associate degree or baccalaureate degree in nuclear medicine technology program from a regionally accredited academic institution. [Asterisk deleted]. Regionally accredited college and university programs must have structured clinical training sufficient to provide clinical competency in radiation safety, instrumentation, clinical procedures, and radiopharmacy. This should require approximately 1000 hours of clinical training supervised by program faculty.
>
> III. Alternate Eligibility and Non-USA trained candidates
> (Must meet requirements listed under section A, B, and C below):

A. Education Requirement (Completion of one of the following)[:]

1. A baccalaureate or associate degree in one of the physical or biological sciences
2. A baccalaureate or associate degree in other disciplines with successful completion of courses in the following areas: college algebra, physics, chemistry, human anatomy, and physiology
3. National certification as a registered medical technologist (MT)
4. National certification as a registered radiographer (RT)
5. Licensed as a registered nurse (RN)
6. National certification as a registered diagnostic medical sonographer (RDMS)
7. National certification as a radiation therapist (RTT)

B. Clinical Experience[:]
Four years full-time (or 8000 hours) of clinical experience in nuclear medicine technology under the supervision of a physician (MD/DO) board certified in nuclear radiology (ABR) or nuclear medicine (ABNM) or isotopic pathology (ABP) or an authorized physician user of radioactive materials with special competency in nuclear medicine[.]

C. Didactic Coursework Requirement[:]
Satisfactory completion of a minimum of fifteen (15) contact hours of coursework in each of the following areas: radiopharmacy, nuclear medicine instrumentation and radiation safety. Only coursework from an accredited college or university, accredited nuclear medicine program or approved continuing education credits recognized by NMTCB, such as VOICE/ECE, will be accepted. You may find courses to satisfy the 45 hour coursework requirement here.

IV. Graduation from a nuclear medicine technology or related program in another country. These individuals should contact the NMTCB office for eligibility requirements. Required documentation will include but not be limited to a complete program description with course descriptions, contact hours, and documentation of clinical experience. Proof of graduation must also be a part of the documentation.

V. CNMTs requesting reexamination for competency.

NOTE: Candidates who believe they have equivalent qualifications may petition the Credentials Committee for consideration. Documentation is required.

Furthermore, the suggested additional qualifying criterion at subparagraph 7 of the Guide's paragraph D is completion of "training in accordance with the outline in Appendix H, 'Sample of A Minimum Radiation Safety Training Outline for Radiation Handlers,'" a document not submitted by counsel. Review of

Appendix H at the Texas Bureau of Radiation Control's Internet site reveals that a bachelor's degree or the equivalent in a specific specialty is not required for either qualification for or completion of this training.

In light of the evidence of record, counsel's contention that the director placed undue emphasis upon the *Handbook* is unsubstantiated, as is counsel's alternative contention that the proffered position has reached a transitional stage towards specialty occupation status that merits its recognition as a specialty occupation. With regard to the latter contention, the petitioner has not established, for instance, that technical developments in the field are consistently generating a requirement for a bachelor's degree in a specific specialty. In fact, on the basis of the *Handbook* and the evidence of record, it appears that the lack of a specialty-degree requirement is a stable general aspect of the nuclear medicine technologist occupation. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As the evidence of record does not establish that the normal minimum entry requirement for the proffered position is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

The first alternative prong assigns specialty occupation status to a proffered position that requires at least a bachelor's degree in a specific specialty that is also commonly required in the petitioner's industry for positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *Handbook* reports that the industry requires a degree; 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.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

As discussed earlier in this decision, the evidence does not establish that the proffered position is a type of position for which the *Handbook* indicates an industry-wide requirement for at least a bachelor's degree in a specific specialty. Also, the record does not include any submissions from firms or individuals in the industry attesting that they routinely employ and recruit only persons with at least such a degree.

The petitioner also has not qualified the proffered position under the second alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*2*). This criterion provides that, instead of proving a common degree requirement that is shared by its industry, "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." The evidence of record does not establish such uniqueness or complexity. Rather, the position appears to be a typical nuclear medicine technologist position that can be performed in Texas, the proffered job's location, without at least a bachelor's degree in any specific specialty.

Next, the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty. The record does not establish a history of the petitioner only recruiting and hiring persons with that educational credential.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Despite counsel's contrary estimation, the evidence of record does not demonstrate that the proposed duties are so specialized and complex. In fact, to the extent that they are described in the record, the duties appear no more specialized and complex than those which the *Handbook* attributes to nuclear medicine technologist positions in general, positions for which the *Handbook* does not report a requirement for a bachelor's degree in a specific specialty.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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 not sustained that burden. Accordingly, the appeal will be dismissed.

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