



U.S. Citizenship
and Immigration
Services

D2

[Redacted]

FILE: LIN 04 078 51248 Office: NEBRASKA SERVICE CENTER Date: 04 21 2011

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:
[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.

Robert P. Wiemann

Robert P. Wiemann, Director
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 The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is a wilderness based residential youth treatment center. It seeks to employ the beneficiary as a residential treatment instructor and to classify her 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 stating that 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 first 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 counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a residential treatment instructor. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

30 per cent of the time

- Develop and implement the outdoor education curriculum, including trip itineraries and daily activity schedules;
- Prepare daily progress reports for individual clients and summary reports at the conclusion of each session; and
- Maintain regular (daily) communication with senior staff, including the program director and clinical director;

50 per cent of the time

- Teach academic lessons and life skills, including philosophy, values and ethics;
- Supervise and instruct clients in skill acquisition through recreation activities, using an understanding of various learning methods and reinforcing and building positive self esteem;
- Use adaptive techniques to modify outdoor recreation activities for clients with physical and mental impairments, including physical disabilities, visual and hearing impairments, attention deficit disorder (ADD), attention deficit/hyperactivity disorder (ADHD), learning disabilities, autism, chronic asthma, etc., and

- Use outdoor activities and challenges to aid in socialization for clients, assisting in their recovery from social or behavioral problems that result from years of abuse, neglect, and drug/alcohol addiction, and in development of appropriate behavior patterns;

20 per cent of the time

- Identify and deal with signs of stress in clients (a critical issue with clients who have difficulty communicating), demonstrate skills for coping with stress, and help clients develop productive and positive thought patterns;
- Respond appropriately in the event of routine, urgent, or emergency mental health or medical problems, following program guidelines and policies;
- Consistently address and confront negative behaviors and respond appropriately to delinquent behavior; and
- Maintain a commitment to safety standards, and promote the physical and emotional well-being of clients at all times.

The petitioner requires a minimum of a bachelor's degree in exercise science, physical education, sports psychology, exercise physiology or a related field as a minimum requirement for entry into the proffered position.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. 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 are essentially those of recreational therapists who use leisure activities - especially structured group programs - to improve and maintain clients' general health and well-being. They also provide intervention to prevent the client from suffering further medical problems and complications related to illnesses and disabilities. Community-based recreational therapists may work in park and recreation departments, special-education programs for school districts, or programs for older adults and people with disabilities such as assisted-living, adult daycare, and substance abuse rehabilitation centers. The *Handbook* notes that a bachelor's degree in therapeutic recreation, or in recreation with a concentration in therapeutic recreation, is the usual requirement for entry-level positions. The proffered position does, therefore, qualify as a specialty occupation as a baccalaureate or higher degree or its equivalent, in a specific specialty, is normally the minimum requirement for entry into the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The director did not comment on the beneficiary's qualifications to perform the duties of a specialty occupation as the petition was denied on another ground. As such, this matter must be remanded to the director to determine whether the beneficiary is qualified to perform the duties of the offered specialty. The *Handbook* notes that a bachelor's degree in therapeutic recreation, or in recreation with a concentration in therapeutic recreation, is the usual requirement for entry-level positions. The beneficiary's foreign education has been determined to be equivalent of a bachelor's degree in sport and leisure studies from an accredited college or university in the United States. The director shall consider the record in its entirety in determining whether the beneficiary is qualified for the proffered position, and may request such additional evidence as he deems necessary in rendering

his decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion. If the director's decision is adverse to the petitioner, the matter shall be certified to the AAO for review.