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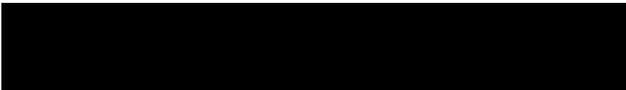


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FILE: SRC 04 143 50733 Office: TEXAS SERVICE CENTER Date:

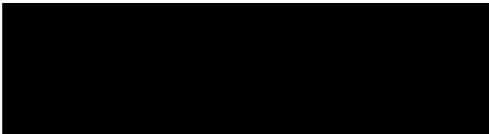
JUN 15 2006

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.

A handwritten signature in cursive script, 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 a commercial ice producer and manufacturer of ice sculptures. It seeks to employ the beneficiary as a bioanalyst and endeavors 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 because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief 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 a bioanalyst. 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 the record the beneficiary would:

- Perform daily laboratory tests to detect bacteria harmful to humans;
- Recommend changes to the assembly line to assure that no outside chemical and/or bacteriology elements can enter the packaging process in order to prevent the injection of foreign particles that can contaminate products;
- Conduct customer surveys to ascertain the quality of products using scientifically approved methods;
- Train workers regarding the optimal conditions required to handle products; and
- Add chemicals to water reservoirs to ensure cleanliness and proper lead levels.

The petitioner requires a minimum of a bachelor’s degree in biology, laboratory technology, and/or bio-analysis for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by counsel. Factors often considered by CIS when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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/Baker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are not those of a bioanalyst or medical laboratory technologist as stated by the petitioner. Medical laboratory technologists (also known as clinical laboratory technologists) play crucial roles in the detection, diagnosis, and treatment of disease. They examine and analyze body fluids, tissues, and cells. They look for bacteria, parasites, and other microorganisms; analyze the chemical content of fluids; match blood for transfusions; and test for drug levels in the blood to show how a patient is responding to treatment. These are not the type of duties the beneficiary would perform in the petitioner's business operation. The petitioner also states that the proffered position is that of a bioanalyst. These individuals are defined by the Association of Bioanalysts as clinical laboratory directors, owners, managers and supervisors. The record does not establish that the petitioner, a commercial ice producer, operates or possesses a clinical laboratory, or laboratory of any kind for that matter.

The duties of the proffered position, as described by the petitioner, are more closely related to those of a science technician. The *Handbook* states that science technicians use the principles and theories of science and mathematics to solve problems in research and development and to help invent and improve products and processes. Their jobs are more practically oriented than those of scientists. Those who work in production monitor manufacturing processes and may be involved in ensuring quality by testing products for proper proportions of ingredients, for purity, or for strength and durability. The *Handbook* states that there are several ways to qualify for a job as a science technician. Many employers prefer applicants who have at least two years of specialized training or an associate degree in applied science or science-related technology. Because employers' preferences vary, however, some science technicians have a bachelor's degree in chemistry, biology, or forensic science, or have taken several science and math courses at four-year colleges. A baccalaureate level education in a specific specialty is not, however, the normal minimum requirement for entry into the proffered position and the petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner states that a degree in a specific specialty is common to the industry for the offered position and quotes the *Handbook* for the educational requirements of a clinical laboratory technologist. As previously noted, however, the duties of the instant position are not those of a clinical or medical laboratory technologist. Thus, the petitioner's reliance on the educational requirements stated in the *Handbook* for those positions is misplaced. The record contains no other evidence establishing that a degree in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. 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 entry into 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 duties described by the petitioner are not so complex or unique that they can only be performed by an individual with a degree in a specific specialty. Nor has it been established that the duties of the position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties appear to be those normally performed by science technicians in the petitioner's work/production environment. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 not sustained that burden and the appeal shall accordingly be dismissed.

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