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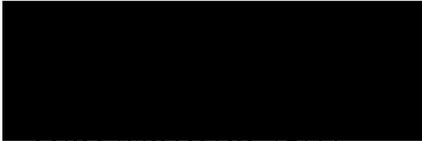
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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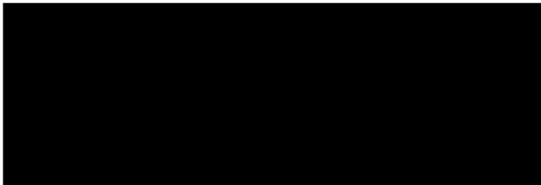


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 30 2010

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition that is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

On the visa petition the petitioner stated that it is a rehabilitation management company and that it seeks to employ the beneficiary in the position of occupational therapist as an H-1B nonimmigrant 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 based the decision of denial upon her finding that the petitioner failed to demonstrate that the proffered position is a specialty occupation. This finding was, in turn, based upon the determination that the industry standard for entry into the proffered position is a master's degree or the equivalent in the field, whereas the petitioner only requires a bachelor's degree. On appeal, counsel asserted that the proffered position is in a specialty occupation, notwithstanding that it requires only a bachelor's degree.

At issue in this matter is whether the proffered position is a specialty occupation.

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)(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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means an 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 also 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.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently 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.¹ Applying this standard, USCIS 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 law governing the H-1B visa category typically requires the AAO to examine the specific degree required as a minimum for entry into a professional occupation.

¹ As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

This regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996).

The AAO recognizes the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations.² As to the educational requirements for an entry-level occupational therapist position, the *Handbook* states, "A master's degree or higher in occupational therapy is the typical minimum requirement for entry into the field."

As to licensure, the *Handbook* states:

All States regulate the practice of occupational therapy. To obtain a license, applicants must graduate from an accredited educational program and pass a national certification examination. Those who pass the exam are awarded the title "Occupational Therapist Registered (OTR). Specific eligibility requirements for licensure vary by State; contact your State's licensing board for details.

The OTR designation is awarded by the National Board for Certification of Occupational Therapists [REDACTED] recognizes U.S. occupational therapy degrees accredited by the [REDACTED] of the American [REDACTED] See website maintained by NCBOT at [REDACTED]

Beginning in 2007 the AOTA ceased to accredit occupational therapy degrees at less than the master's degree level. See the website maintained by the AOTA at www.nbcot.org. Currently, therefore, in order to qualify to take the examination necessary for entry into the workforce as an occupational therapist, one must possess a minimum of a master's degree or the equivalent in occupational therapy.

The evidence shows a master's or higher degree or its equivalent is normally the minimum requirement for entry into a position as an occupational therapist, and that employment as an occupational therapist requires theoretical and practical application of a body of highly specialized knowledge. The proffered position therefore qualifies as a position in a specialty occupation. The director's determination that the proffered position is not a specialty occupation was incorrect, and the director's first ground for denial will be withdrawn.

The record suggests an additional issue that was not addressed in the decision of denial. The record shows that the beneficiary has a bachelor's degree in occupational therapy. One might gather that, because the proffered position typically requires a minimum of a master's degree and the beneficiary has only a bachelor's degree, the beneficiary is not qualified for the proffered position and the petition must be denied on that basis.

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online, accessed July 29, 2010.

However, section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A), provides that a beneficiary may qualify for a specialty occupation by virtue of "full state licensure to practice in the occupation, if such licensure is required to practice in the occupation." *See also* 8 C.F.R. § 214.2(h)(4)(iii)(C)(3). In the instant case, the petitioner proposes that the beneficiary would work in Shafter, California. California requires licensure of occupational therapists pursuant to sections 2570 and 2571 of the Business and Professions Code. The record demonstrates that the beneficiary is fully licensed to practice occupational therapy in California. The AAO finds, therefore, that the beneficiary is qualified for the proffered position.

As the petitioner has overcome the sole basis for denial and as the visa petition is otherwise approvable, the appeal will be sustained, and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.