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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC-00-062-51661 Office: California Service Center Date: JAN 13 2003

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)

PUBLIC COPY

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen and reconsider. The motion will be granted. The previous decisions of the director and the Associate Commissioner will be withdrawn, and the petition will be approved.

The petitioner is a medical clinic with eight employees and an approximate gross annual income of $350,000. It seeks to employ the beneficiary as a medical researcher for a period of three years. The director determined the petitioner had not demonstrated that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel argued that the beneficiary's proposed duties include conducting research under the supervision of a medical doctor. Counsel stated that the beneficiary would not be involved in performing hands-on patient care.

The Associate Commissioner dismissed the appeal reasoning that the petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation because the record did not contain an evaluation of his academic credentials from a service that specializes in evaluating foreign educational credentials as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(3).

On motion, counsel submits a photocopy of an evaluation of the beneficiary's foreign education.

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), provides in part for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have 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.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) as:

> an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such 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.

The duties of the beneficiary in the proffered position are described in pertinent part as follows:

> ...he will perform retrospective study on hypertensive patient using both physical and echocardiogic findings for the evaluation of hypertensive heart disease that is prevalent in the inner city. This study involves performing laboratory tests and experiments; chart review and to obtain data for diagnosis, treatment and future prevention.
>
> The research also involves obtaining results of body fluid and blood and sometimes spinal fluid; histro-physical, labor conditions, echocardiographic findings, and patient life-style evaluations to determine the cause of heart disease and how it can be alleviated. the research is under the supervision of a medical doctor.

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.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to be primarily that of a clinical laboratory technologist. The Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 279-281, states the following:

> *Medical and clinical laboratory technologists* generally have a bachelor's degree in medical technology or in one of the life sciences, or they have a combination of formal training and work experience. They perform complex chemical, biological, hematological, immunologic, microscopic, and bacteriological tests. Technologists microscopically examine blood, tissue, and other body substances. They make culture of body fluid and tissue samples, to determine the presence of bacteria, fungi, parasites, and other microorganisms. They analyze samples for chemical content or reaction and determine blood glucose and cholesterol levels. They also type and cross match blood samples for transfusions.

The Service interprets this language to mean that a degree in a specific specialty is a requirement except in unique instances. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the 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 beneficiary holds bachelor's degrees in health sciences (medicine), medicine, and surgery from the University of Ife (formerly Obafemi Awolowo University) in Ife-Ife, Nigeria. A service specializing in evaluating foreign educational credentials has determined that the beneficiary's education was the equivalent "...in level and purpose to the Doctor of Medicine degree, awarded by regionally accredited colleges and universities in the United States." The evaluation service appears to fulfill the requirements of 8 C.F.R. 214.2(h)(4)(iii)(D)(3), in that it specializes in evaluating foreign educational credentials. The conclusions contained in the evaluation regarding the beneficiary's degree equivalence are considered reasonable and shall be accepted. Accordingly, the beneficiary is considered to be qualified to perform services in the offered position.

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 previous decisions of the director and the Associate Commissioner will be withdrawn and the petition will be approved.

ORDER: The order of June 19, 2001 dismissing this appeal is withdrawn. The petition is approved.