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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



U.S. Citizenship  
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER

Date: **SEP 21 2010**

IN RE: Applicant: [REDACTED]

APPLICATION: Application to Register Permanent Residence or Adjust Status (Form I-485) Pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the application to register permanent residence or adjust status (Form I-485) and affirmed his decision in subsequently filed motions to reopen or reconsider, the last of which he has certified to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The application will be denied.

The applicant seeks to adjust his status to that of a lawful permanent resident pursuant to section 245 of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1255. The director initially denied the application, and affirmed his determination when ruling on the applicant's subsequently filed motions, because the applicant failed to submit the required Visa Screen Certificate (Visa Screen) from [REDACTED]. On notice of certification, the director informed the applicant that he had 30 days to supplement the record with any additional evidence that he wished the AAO to consider. As of this date, the AAO has not received any additional evidence and we, therefore, consider the record complete and ready for adjudication.

Section 245(a) of the Act states:

The status of an alien who was inspected and admitted or paroled into the United States . . . may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if:

- (1) the alien makes an application for such adjustment,
- (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and
- (3) an immigrant visa is immediately available to him at the time his application is filed.

Section 212(a)(5)(C) of the Act, states:

Uncertified foreign health-care workers - Subject to subsection (r), any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is excludable unless the alien presents . . . in the case of an adjustment of status . . . a certificate from the Commission on Graduates of Foreign Nursing Schools . . . .

The regulation at 8 C.F.R. § 212.15 states, in pertinent part:

(a) General certification requirements. (1) [A]ny alien who seeks admission to the United States as an immigrant . . . for the primary purpose of performing labor in a health care occupation listed in paragraph (c) of this section is inadmissible unless the alien presents a certificate from a credentialing organization, listed in paragraph (e) of this section.

\* \* \*

(c) Covered health care occupations. [T]his paragraph (c) applies to any alien seeking admission to the United States to perform labor in one of the following health care occupations, regardless of where he or she received his or her education or training:

\* \* \*

(5) Medical Technologists (Clinical Laboratory Scientists)

\* \* \*

(7) Medical Technicians (Clinical Laboratory Technicians)

\* \* \*

(e) Approved credentialing organizations for health care workers. An alien may present a certificate from any credentialing organization listed in this paragraph (e) with respect to a particular health care field. . . .

(1) The [REDACTED] is authorized to issue certificates under section 212(a)(5)(C) of the Act for nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants.

\* \* \*

The applicant is the beneficiary of an approved Form I-140, Petition for Alien Worker, as a Medical Technologist. On February 18, 2003, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On September 23, 2004, the director issued the applicant a Notice of Intent to Deny (NOID) to obtain a Visa Screen from [REDACTED].

The record contains a September 13, 2006 letter from an international credentials evaluator at [REDACTED]. In this letter, the evaluator explains that, based upon a review of the applicant's education, [REDACTED] has determined that the applicant's education is that of a specialist in clinical laboratory science and he, therefore, does not require a Visa Screen. The record also contains an April 3, 2008 letter from the Director of Governmental Affairs and Professional Services at [REDACTED]. The Director reiterates the same information that was in the evaluator's letter — [REDACTED] does not issue Visa Screens to individuals who are specialists in clinical laboratory sciences, as it does not believe that these types of positions are covered under section 212(a)(5)(C) of the Act.<sup>1</sup>

<sup>1</sup> The evaluator states that [REDACTED] has written a letter to the Department of Homeland Security (DHS) to state its belief that professionals who are specialists in clinical laboratory sciences do not practice as clinical laboratory generalists and, therefore, do not perform the general medical laboratory functions that Congress

We concur with the director that the applicant's adjustment applicant must be denied for failure to submit a Visa Screen. The term "health care worker" at section 212(a)(5)(C) of the Act is defined at 8 C.F.R. § 212.15(c), and includes, but is not limited to, "Medical Technologists." There is no distinction either at 8 C.F.R. § 212.15(c) or any other part of 8 C.F.R. § 212.15 between a specialist and a generalist in the medical technology field. Therefore, USCIS regulations require that anyone seeking to work as a medical technologist would be required to obtain a Visa Screen in order to adjust to lawful permanent resident status. As the applicant has not obtained a Visa Screen, his application may not be approved.

As in all proceedings, the applicant bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The director's decision to deny the application is affirmed. The application is denied.

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intended to be covered under section 212(a)(5)(C) of the Act. We note that [REDACTED] concludes that the applicant would be working as a specialist in the field of medical technology/clinical laboratory science based upon a review of his education, not on the actual duties that he would be required to perform.