

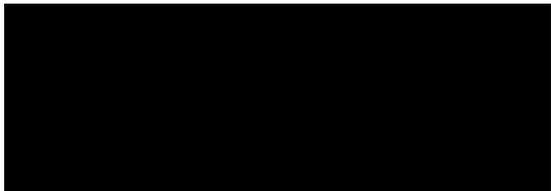
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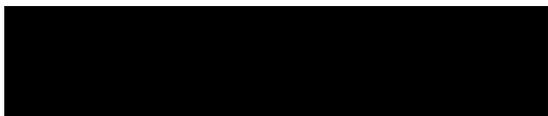
**U.S. Citizenship
and Immigration
Services**



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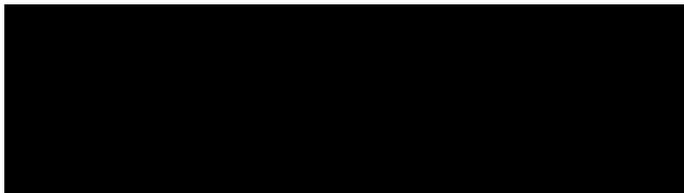
FILE: WAC 03 216 51297 Office: CALIFORNIA SERVICE CENTER Date: 11/21/05

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO).¹ The appeal will be dismissed. The petition will be denied.

The petitioner is a medical clinic. It seeks to employ the beneficiary as a medical research associate and to classify him 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 on the ground that the record failed to establish that the proffered position is 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.

As provided in 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.

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.

¹ The notice of appeal and accompanying brief were filed by an attorney, [REDACTED] who has not filed a Form G-28 (Notice of Entry of Appearance as Attorney or Representative) and is not a member of the firm that has a G-28 on file. Though [REDACTED] is not the attorney of record, and therefore will not be sent a copy of this decision, his submission will be considered by the AAO. A copy of this decision will be sent to the petitioner's authorized representative in this petition, the Law Offices of Mike S. Manesh.

The record of proceeding before the AAO contains (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as a medical clinic established in 1982, with two employees and \$250,000 in gross annual income, that provides a variety of medical treatments in the areas of internal medicine, ambulatory surgery, podiatry, physical therapy, and complete laboratory work. As part of his medical practice the petitioner's lead physician, [REDACTED] stated that he conducts research and writes articles for medical publications. The petitioner declared that a medical research associate was needed to help research available drugs and treatments for its patients' conditions and diseases. As described by the petitioner the researcher would work in the office, under the direct supervision of the clinic's licensed physicians, researching medical literature on the clinical trials of new and experimental drugs and treatments applicable to the petitioner's practice. The petitioner asserted that the proffered position required a bachelor's degree or the equivalent in medical and/or scientific studies. The beneficiary earned a doctor of medicine degree from Islamic Azad University in Teheran, Iran, on November 28, 1998. According to an educational credentials evaluation by Academic and Professional International Evaluations, Inc. of Los Alamitos, California, the beneficiary's education in Iran is equivalent to at least a bachelor of science degree from an accredited college or university in the United States.

In its response to the RFE the petitioner provided further information about the proffered position. The medical research associate would explore medical literature for health issues, review and discuss patients' charts with the physician, and research possible alternative drugs and treatments. The specific duties of the position were listed as follows:

- Obtaining information from all relevant sources such as medical journals, research papers, pharmaceutical literature, patients' chart and files, the internet, etc.
- Identifying information by categorizing, estimating, recognizing differences or similarities, and detecting changes in cases.
- Identifying the underlying principles, reasons, and facts of information by breaking down information or data into separate parts.
- Compiling, coding, categorizing, calculating, tabulating, auditing, and verifying data.
- Analyzing information by applying scientific techniques and knowledge and evaluating results, preparing reports, and presenting findings to the physician to help him choose the best solution for the ailments.
- Keeping up to date technically and applying new knowledge to the process.
- Entering, transcribing, recording, and maintaining information.

The director determined that the proffered is not a specialty occupation. Though the petitioner maintained that the position fit the description of a biological or medical scientist, as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director found that the job duties were vague, provided little insight into the daily duties of the position, and did not compare to the duties of a biological or medical scientist. In the director's view, the record failed to establish that the proffered position required a baccalaureate degree in a specific specialty, that a baccalaureate degree was

common to the industry in parallel positions among similar organizations, or that the duties of the position were so specialized and complex that knowledge associated with a baccalaureate or higher degree was required to perform them. The director concluded that the proffered position did not qualify as a specialty occupation under any of the four criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel argues that a bachelor's degree in the sciences is the minimum educational requirement for an individual to be able to perform the demanding duties of the proffered position, making it a bona fide specialty occupation. Counsel succinctly summarized the position as follows:

The job basically involves collection and analysis of data in medical sciences in a clinical context leading, on the one hand, to more effective treatment of patients, and, on the other hand, to the sharing and advancement of literature in medical sciences.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; whether the industry's 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

The AAO agrees with the director that the proffered position does not fit the *Handbook's* description of a biological or medical scientist. In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are determinative, not the title of the position. The *Handbook*, 2004-05 edition, at 149-150, describes the occupation of biological scientist, in pertinent part, as follows:

Biological scientists study living organisms and their relationship to their environment. They research problems dealing with life processes. Most specialize in some area of biology such as zoology . . . or microbiology

Many biological scientists work in research and development. Some conduct basic research to advance knowledge of living organisms, including viruses, bacteria, and other infectious agents Biological scientists mostly work independently in private industry, university, or government laboratories, often exploring new areas of research or expanding on specialized research started in graduate school

Biological scientists who work in applied research or product development use knowledge provided by basic research to develop new drugs and treatments, increase crop yields, and protect and clean up the environment

Those who conduct research usually work in laboratories and use electron microscopes, computers, thermal cyclers, or a wide variety of other equipment. Some conduct

experiments using laboratory animals or greenhouse plants. For some biological scientists, research also is performed outside of laboratories [in natural outdoor locales]...

Most biological scientists are further classified by the type of organism they study or by the specific activity they perform [such as] aquatic biologists . . . marine biologists . . . limnologists . . . biochemists . . . botanists . . . microbiologists . . . physiologists . . . biophysicists . . . zoologists and wildlife biologists . . . [and] ecologists.

The proffered position does not fit any of the biological scientist classifications discussed in the *Handbook*, and the nature of its duties are clearly not those of a biological scientist. The duties described by the petitioner do not involve any laboratory or outdoor research of living organisms and their relationship to the environment. They do not involve any basic research to advance knowledge of living organisms or any applied research to develop new drugs and treatments. Rather, the duties of the proffered position focus on researching medical literature to determine whether already existing and available drugs and treatments should be used on the petitioner's patients. Thus, the proffered position is not a biological scientist.

As for medical scientists, the *Handbook* describes that occupation, in pertinent part, as follows:

Medical scientists research human diseases in order to improve human health. Most medical scientists work in research and development. Some conduct basic research to advance knowledge of living organisms, including viruses, bacteria, and other infectious agents. Past research has resulted in the development of vaccines, medicines, and treatments for many diseases Medical scientists also engage in clinical investigation, technical writing, drug application review, patent examination, or related activities.

Medical scientists study biological systems to understand the causes of disease and other health problems and to develop treatments. They try to identify changes in a cell or chromosomes that signal the development of medical problems, such as different types of cancer

Many medical scientists work independently in private industry, university, or government laboratories, often exploring new areas of research or expanding on specialized research that they started in graduate school

Medical scientists who work in applied research or product development use knowledge provided by basic research to develop new drugs and medical treatments

Medical scientists who conduct research usually work in laboratories and use electron microscopes, computers, thermal cyclers, or a wide variety of other equipment. Some may work directly with individual patients or larger groups as they administer drugs and monitor and observe the patients during clinical trials

Medical scientists typically work . . . in offices or laboratories [They] also spend time working in clinics and hospitals administering drugs and treatments to patients in clinical trials

Handbook, id., at 155-57. The nature of a medical scientist's work resembles that of a biological scientist insofar as it focuses on basic or applied research to advance knowledge in the field and/or develop new drugs and treatments. The distinction between the two occupations is that medical scientists research areas of human health, whereas biological scientists research areas of the broader environment.

The proffered position in this case does not fit the *Handbook's* description of a medical scientist. The duties described by the petitioner do not involve any laboratory research of human diseases, either basic research to advance knowledge of living organisms or applied research to develop new drugs and treatments. The proffered position does not involve any clinical investigation, technical writing, drug application review, patent examination, or related activities. Nor does it involve any work administering drugs and treatments to patients in clinical trials. Rather, the duties of the proffered position focus on researching medical literature to determine whether already existing drugs and treatments should be used on the petitioner's patients. The petitioner's medical research associate will engage in the secondary research of existing medical literature, not primary laboratory research. The duties of the proffered position concentrate on identifying available drugs and treatments for use on the petitioner's patients. This type of patient-specific research is generally performed by physicians and their staffs for individual patient diagnosis and care. It is not the type of basic or applied research performed by medical scientists to advance the general knowledge in an area of human health or develop new and broadly applicable drugs and treatments.

Though the petitioner asserts that the proffered position (irrespective of whether it is considered a biological scientist or medical scientist) requires at least a baccalaureate degree in the sciences, the AAO is not persuaded. The duties of the position, as described by the petitioner, give no indication as to what specific medical literature will be consulted and what specific medical issues are likely to be researched. The AAO agrees with the director that the description of the position is too vague to establish that the medical research associate requires a bachelor of science degree in a specific job-related specialty. Accordingly, the record fails to establish that a baccalaureate or higher degree is the normal minimum requirement for entry into the proffered position, as required to meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), the record includes job advertisements for eight positions variously called research associate, research assistant, clinical research associate, or clinical research assistant. While all of the advertisements require the applicants to have a baccalaureate degree, only five of them specify that the degree must be in the sciences. The advertisements that do not require a science degree indicate that an applicant should have work experience related to the position. The job descriptions vary considerably from one another, as well as from the proffered position in this case. Furthermore, none of the advertising companies appears to be comparable to the petitioner in regard to its line of business or scale of operation. Accordingly, the job announcements do not establish that the requirement of a specialty degree is common to the industry in parallel positions among similar organizations, as required for the position proffered by the petitioner to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record demonstrate that the proffered position is so complex or unique that it can only be performed by an individual with a specialty degree, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proffered position does not meet the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – “the employer normally requires a degree or its equivalent for the position” – because the subject position did not previously exist and the petitioner has no hiring history for it.

Lastly, the record does not establish that the duties of the proffered position are so specialized and complex that they require a level of knowledge associated with the attainment of a baccalaureate or higher degree in a specific specialty, as required for the position to meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). As previously discussed, the job description in the record is too vague to show that a baccalaureate level of knowledge in a specific area of science is required to perform the services of the job.

For the reasons discussed above, the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director’s decision denying the petition.

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