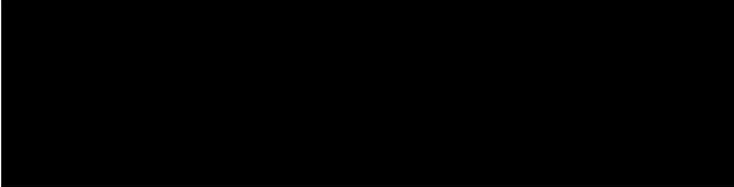




U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY



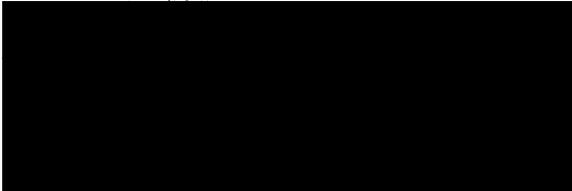
DL

FILE: WAC 02 251 54531 Office: CALIFORNIA SERVICE CENTER Date: FEB 17 2005

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.

Robert P. Wiemann

Robert P. Wiemann, Director
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 home health care provider that seeks to employ the beneficiary as a medical writer. The petitioner endeavors to classify the beneficiary 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 is not a specialty occupation. On appeal, counsel submits a brief.

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)(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.

The record of proceeding before the AAO contains: (1) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a medical writer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 29, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: compiling and maintaining complete medical reports and related documentation for the doctors' reference and for submission to the insurance companies; contacting the physicians when necessary to make changes in the patients' status; updating care/treatment plans, recertification and discharges; providing the rationale to insurance companies regarding the reason the services provided by the petitioner are reasonable and necessary; providing a complete analysis of the patients' illness or injury based upon the physicians' reports, nurses' reports, medical history and laboratory results; writing reports to be submitted to Medicare, Medi-Cal, private insurance companies and other physicians; keeping up-to-date on the latest medical research results utilizing the medical library; and utilizing medical journals, text books and medical research materials to perform the analysis and evaluation of the patients' conditions. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in medicine.

The director found that the proffered position was not a specialty occupation because the position was more like a medical assistant than a medical writer.

On appeal, counsel states that the proffered position of a medical writer is a specialty occupation, and that the position has nothing to do with being a medical assistant. The AAO does not disagree with counsel on this matter. The duties of the proffered position are unrelated to those of a medical assistant. The director's comments on this matter are withdrawn. The AAO also concurs with counsel that a medical writer is generally considered to be a specialty occupation. The issue to be resolved is whether the proffered position is actually that of a medical writer.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

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 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree

in a specific specialty as the minimum for entry into the occupation as required by the Act. The duties listed in the petitioner's July 29, 2002 letter of support seem to exceed the type of care provided by the petitioner. The petitioner stated that it provided "live-in companions, home care aides, LVN's, CNA's, caregiver services, housekeeping services and many more." The brochure that was submitted with the petition supports this description of the services provided by the petitioner. The duties of the proffered position include a level of research, writing and reporting that appears to be unrelated to the work of live-in companions, aides, housekeepers, LVN's and CNA's. The petitioner has not shown how the beneficiary would specifically be working as a medical writer in the context of the petitioner's business or what the beneficiary would do in that position on a daily basis.

The issue is not whether a medical writer is a specialty occupation, because it normally is, but whether the petitioner has established that the beneficiary would actually be performing the duties of a medical writer. The petitioner has not provided enough detail to establish that the beneficiary would be acting in this position.

Regarding parallel positions in the petitioner's industry, in response to the director's request for evidence, counsel provided one position announcement from the Internet. Neither the position nor the employer is similar to the proffered position or the petitioner. As stated previously, the AAO agrees with counsel that a position as a medical writer is generally considered to be a specialty occupation. The lack of detail in the position description as it applies to the petitioner's business makes it difficult to determine if the beneficiary will be performing services in a specialty occupation. The petitioner has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. This is a new position, and the petitioner is not in a position to meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Most of the duties involve gathering information from medical records and in some cases writing reports about the information contained in the records. This could be done by an individual with a background in healthcare that falls short of a baccalaureate level degree. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

An H-1B alien is coming temporarily to the United States to perform services in a specialty occupation. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b), 8 C.F.R. § 214.2(h)(1)(ii)(B). The petitioner claims that it will employ the beneficiary as a medical writer, but it has not proved that the beneficiary will be coming to the United States to perform services as a medical writer.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. 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.

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