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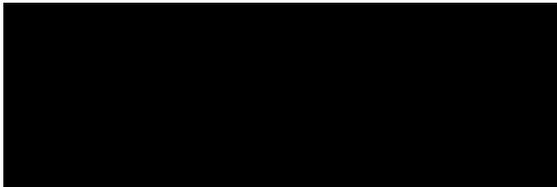


FILE: WAC 03 013 54803 Office: CALIFORNIA SERVICE CENTER Date: JAN 05 2005

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

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). The appeal will be dismissed. The petition will be denied.

The petitioner is dental office in California. It seeks to employ the beneficiary as a technical writer and to classify her 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 proffered position is not a specialty occupation. On appeal counsel argues that the record establishes the petitioner's need for a technical writer, that the position must be filled by an individual with a baccalaureate or higher degree in the field of dentistry, and that the duties of the position are sufficiently specialized and complex to require an employee with a bachelor's degree.

Section 214(i)(1) of the Immigration and Nationality Act (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 (RFE); (3) the petitioner's response to the RFE; (4) the

director's notice of decision; (5) the petitioner's appeal, Form I-290B; and (6) the appeal brief and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a technical writer. As explained by the petitioner in response to the director's RFE, the duties of the position include the following:

- Reviewing files, dental charts, x-rays, patient information, and other technical documents and reports, based on which detailed reports are prepared. The employee must be proficient in medical/dental terminology and knowledgeable about dental conditions, diagnoses, and procedures.
- Drafting letters and other correspondence to patients, government agencies, and insurance companies relating to the processing of insurance claims, legal matters, medical referrals, and other professional communications.
- Drafting promotional and informational materials for distribution within the office and for print publications, coordinating the work with a publicist and other professionals.
- Performing research and analyzing scientific and technical data relating to dental conditions. The employee must have excellent written and oral communication skills commonly acquired through a baccalaureate level education, along with a thorough understanding of dental conditions, dentistry practices and procedures.

The petitioner asserted in its response to the RFE that a qualified candidate for the job must have at least a bachelor's degree. The beneficiary, a native of the Philippines, earned a Doctor of Dental Medicine degree at the University of the East in Manila on May 5, 1997.

The director found that the position offered to the beneficiary is not a specialty occupation. Specifically, the director found that the record failed to establish that the petitioner had need of a technical writer given the size and nature of its business. In the director's view it was not credible that the beneficiary would be drafting technical articles for publications, conducting research and reviewing the results of clinical studies, considering the lack of evidence that the petitioner had the requisite facilities to perform such research. "Realistically," the director concluded, "it appears that the beneficiary will be performing administrative/clerical duties." In denying the petition, the director declared that the record failed to establish (a) that a bachelor's degree or its equivalent is required for the position actually being offered, (b) that the petitioner has required the services of a degreed individual for the position in the past, (c) that businesses similar to the petitioner in their type and scale of operations require the services of degreed individuals in parallel positions, or (d) that the duties of the position are so specialized and complex that the knowledge required to perform them is associated with a baccalaureate or higher degree. Accordingly, the subject position did not meet any of the criteria for classification as a specialty occupation.

In determining whether a position qualifies as a specialty occupation, under the statutory and regulatory criteria set forth in section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(iii)(A), CIS routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular

occupations. Factors typically considered by CIS 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. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)). 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.

In his appeal brief counsel amplifies the job title of the proffered position to that of *medical* technical writer, asserts that it is a profession requiring at least a bachelor's degree, and that it therefore qualifies as a specialty occupation. Citing language from *Matter of Desai*, 17 I&N Dec. 569, 570 (Reg. Comm. 1980) and from the *Handbook*, counsel contends that medical technical writer is a profession within the meaning of section 101(a)(32) of the Act and a specialty occupation within the meaning of section 214(i)(1) of the Act, and that the beneficiary possesses the requisite education, training, and experience for the subject position. The *Handbook*, 2004-05 edition, states that "[a] college degree generally is required for a position as a writer or editor For those who specialize in a particular area . . . additional background in the chosen field is expected Increasingly, technical writing requires a degree in, or some knowledge about, a specialized field – engineering, business, or one of the sciences, for example." The issue in this appeal, however, is not whether a medical technical writer is a specialty occupation, or whether the beneficiary is qualified to work in such an occupation, but whether the specific position offered to the beneficiary is actually that of a medical technical writer.

In a letter accompanying counsel's brief the petitioner asserts that "although . . . there are presently only three staff members in my office, I am in the process of expanding my practice To accomplish this, it is my intent to publish a newsletter and articles in community magazines and newspapers discussing various dental and orthodontic issues [G]iven her dental background, [the beneficiary] is the perfect person to assist me . . . I [also] need [the beneficiary]'s services to assist me with my USC Dental School faculty obligations . . . preparing information to present to my students and at faculty meetings Additionally I need her services when [I am] requested to serve as an expert in dental malpractice cases [in which] . . . I am usually requested to review voluminous patient treatment records, to analyze them . . . and to prepare written reports of my findings." According to the petitioner, the beneficiary's specific duties would include the following:

- Drafting technical articles for publication in dentistry journals and magazines.
- Researching and reviewing relevant data, including results of clinical research studies.
- Preparing reports on the results of her research, and discussing her research with me and other staff members.
- Preparing reports and forms required by state and federal government agencies.
- Preparing reports on patients I see in my private practice and through my faculty position at USC.

- Reviewing patient charts and preparing reports for submission to insurance companies.
- Preparing reports to other dentists and physicians regarding my patients.
- Preparing letters and other correspondence to patients, government agencies, and insurance companies.
- Preparing referral letters and correspondence with other professionals.
- Preparing comprehensive reports for patients referred to other dental specialists.
- Preparing follow-up reports on patients referred to other dental practitioners.
- Drafting dental and orthodontic treatment plans for patients.
- Assisting with record reviews and preparing reports for legal-dental matters.
- Developing a newsletter and promotional materials.

In comparison with the foregoing tasks, the *Handbook*, 2004-05 edition, at page 275, describes the work of technical writers and science and medical writers as follows:

Technical writers put technical information into easily understandable language. They prepare operating and maintenance manuals, catalogs, parts lists, assembly instructions, sales promotion materials, and project proposals. . . . *Science and medical writers* prepare a range of formal documents presenting detailed information on the physical or medical sciences. They convey research findings for scientific or medical professions and organize information for advertising or public-relations needs. Many writers work with researchers on technical subjects to prepare written interpretations of data and other information for a general readership.

In contrast to the broad readership addressed by technical writers and science/medical writers, most of the written work required by the petitioner's medical technical writer is patient-specific and addressed to particular individuals, companies, or professional colleagues associated with the petitioner's practice. Moreover, most of the "technical writer's" duties involve routine paperwork of the petitioner's daily dental practice, the likes of which could ordinarily be performed by a dental assistant and/or office manager. As indicated in the *Handbook*, 2004-05 edition, dental assistants and office managers do not require baccalaureate degrees and therefore do not meet the first alternative criterion to qualify as specialty occupations set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Though a few of the duties listed by the petitioner for its medical technical writer appear to fit within the *Handbook* description of a medical writer – such as "convey[ing] research findings for scientific and medical professions and organiz[ing] information for advertising or public-relations needs" – the record does not establish that the beneficiary will actually be performing the types of activities that would require the services of such an employee. The petitioner has not indicated that it has any research facilities or that the beneficiary would be performing any primary research. If the beneficiary would

simply be reviewing the research of others and writing secondary reports, that would not seem to fit the *Handbook* description of a medical research writer as “convey[ing] research *findings*” (emphasis added). The petitioner has not provided any details about the types of research and writing the beneficiary would perform, or demonstrated that such activities would require the services of an individual with a baccalaureate or higher degree in dentistry. Though the *Handbook* includes “organiz[ing] information for advertising or public-relations needs” as one of the duties a medical writer might perform, the petitioner has not established that the advertising and public relations needs of a small dental office require an employee with a specialty degree in dentistry. In addition, though the petitioner asserts that the beneficiary would also assist him in preparing for classes and faculty meetings at USC and as an expert witness in dental malpractice suits, no evidence has been submitted of the substance and extent of these activities by the petitioner, nor of the course- and/or case-specific assistance to be provided by the beneficiary.

For the reasons discussed above, the petitioner has failed to establish that the proffered position requires the services of a medical technical writer. Accordingly, the record does not indicate that a baccalaureate or higher degree in a specific specialty is the minimum requirement for entry into the position, as required to qualify it as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has submitted no evidence that a specialty degree in dentistry “is common to the industry in parallel positions among similar organizations” – *i.e.*, among small dental practices – as required for the proffered position to satisfy the alternative criterion of a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Based on the previous analysis the proffered position does not appear to be so complex or unique, and the specific duties described by the petitioner do not appear to be so specialized or complex, as to require the theoretical and practical application of a body of highly specialized knowledge associated with a bachelor’s or higher degree in the specific specialty, within the meaning of section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1). Accordingly, the AAO is not persuaded that the subject position and its specific duties fit the alternative criteria of a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4). Indeed, the job description indicates that the duties of the position are primarily administrative in nature. Nor does the proffered position meet the alternative criterion of a specialty occupation set forth in 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 therefore the petitioner has no hiring history.

Thus, the petitioner has failed to establish that the proffered position meets any of the criteria of a “specialty occupation” outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). The statute requires that the beneficiary be coming temporarily to the United States to perform services in a specialty occupation. *See* section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101 (a)(15)(H)(i)(b), and 8 C.F.R. § 214.2(h)(1)(ii)(B). The petitioner has not established that the beneficiary will be performing services in a specialty occupation.

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.