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U.S. Citizenship
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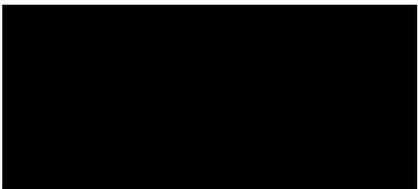


FILE: WAC 03 006 55016 Office: CALIFORNIA SERVICE CENTER Date: JAN 06 2005

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, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 health care provider that seeks to employ the beneficiary as a medical records administrator. The petitioner, therefore, 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: (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a letter and additional and previously submitted evidence.

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 records administrator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail planning and developing a health information system that includes patient identification systems, filing and retrieval of records, coding and analysis of diseases and procedures, and the design of health record forms; developing and implementing policies and procedures for handling health care information and revising and evaluating the existing system; hiring, supervising, and managing staff; instructing employees about controlling, using, and retrieving medical information; developing training programs; and handling workplace design, financial planning, budgets, quality assurance, and selecting equipment and supplies. The petitioner stated that it "requires all [of] our administrators to have at least a bachelor[']s degree."

The director implicitly determined that the proffered position was a specialty occupation. Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director stated that the beneficiary's duties resemble those of a medical and health services manager, and the director narrated the *Handbook's* information about the position's educational and licensing requirements for a health administrator. According to the director, the beneficiary was not qualified to perform the duties of a medical and health services manager.

On appeal, counsel states that the DOL does not indicate that a master's degree is required for a medical and health services manager because the DOL states "a bachelor's degree is adequate for some entry-level positions in smaller facilities and at the department level within healthcare organizations." Counsel claims that the proffered position's duties are performed by a medical records administrator, an occupation that does not require licensure. Counsel claims that the beneficiary is qualified for the proffered position based on her education, experience, and training.

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 first considers 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 *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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In determining whether a position qualifies as a specialty occupation, 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.

As previously mentioned, 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. In the petitioner's June 30, 2003 letter, it stated "[o]ur company requires all [of] our administrators to have at least a bachelor[']s degree." The petitioner requires a bachelor's degree for the proffered position, but it does not require a bachelor's degree in a specific specialty. As such, the petitioner cannot establish that it requires a baccalaureate or higher degree or its equivalent *in a specific specialty* as the normal minimum requirement for entry into the particular position, medical records administrator. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Given that the petitioner does not require a bachelor's degree in a specific specialty, it cannot establish that its specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor can the petitioner establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that it establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position. Finally, the petitioner fails to establish the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) whereby it shows that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Again, the petitioner does not require that a candidate possess a bachelor's degree in a specific specialty.

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.