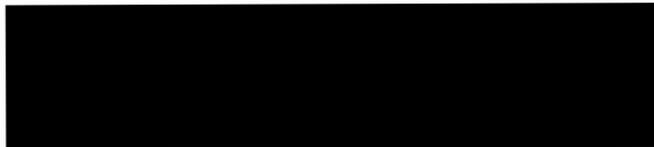


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U.S. Citizenship  
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FILE: EAC 04 124 52617 Office: VERMONT SERVICE CENTER

Date: **MAY 24 2006**

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

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

Robert P. Wiemann, Chief  
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 medical practice that seeks to employ the beneficiary as a medical assistant 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 basis that the proposed position is not a specialty occupation. On appeal, counsel submits a brief and additional 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 bachelor's or higher degree, but one in a specific specialty that is directly related to the proposed 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 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 assistant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the RFE. According to this evidence, the beneficiary would perform duties

that entail preparing reports and discussing patients' charts and files with the physician; helping the physician with in-office procedures, such as biopsy and cystoscopy; researching medical literature to find suggestions of modes of medical treatment for possible diagnosis; researching and reviewing medical literature and journals for particular health issues and developments of specific relevance to patients, such as the latest upper limit of a PSA; relaying the research results to the physician; instructing, counseling, and following up with patients regarding compliance with the physician's orders, as indicated; preparing to perform comprehensive physical examinations, which includes receiving patients for interview and eliciting detailed patients' histories; questioning the patient about his or her present complaint, accompanied symptoms and signs, and eliciting the baseline so that any changes may be determined; checking relevant symptomatology of other organs as well as past medical, surgical, family, and social history; knowing what questions to ask the patient according to their responses; knowing how the symptoms may affect other parts of the anatomy; discussing the patient's charts and files with the physicians; discussing diagnostic tests such as x-rays and lab tests; preparing for and assisting the physician with monitoring the results of treatments; reviewing the patients' charts to determine if all the required screening tests have been ordered and completed; and differentiating normal from abnormal results in various tests, such as the difference between Negative, 5mm, 7mm, 10mm, 15mm, or 20mm in a PPD test to correctly relay the results to the physician. The petitioner stated that the minimum academic qualification for this position is a college level bachelor's degree in medical science or a related field.

In denying the petition, the director stated that the proposed position resembled a medical assistant as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this occupation does not require a bachelor's degree in a specific specialty. The director found that the duties of the position did not appear to be of a complexity that would require the attainment of a bachelor's degree in a specific specialty.

On appeal, counsel asserts that the proposed duties require knowledge acquired in the attainment of a bachelor's degree in biology, physiology, medical science, or nursing. Counsel asserts that a letter was submitted attesting that the standard minimum requirement for a physician's assistant in the medical industry is a bachelor's of science degree in addition to a physician's assistant degree.

The petitioner need only satisfy one of the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has not established that the proposed position meets any the criterion outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

Counsel asserts that this petition should be approved because CIS previously approved the petition of another petitioner on behalf of the same beneficiary. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the position offered in the prior case was similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the

prior petition would have been erroneous. Citizenship and Immigration Services (CIS) is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proposed position are essentially those noted for medical assistants with additional research responsibilities. The proposed position does not rise to the level of a physician's assistant position where one practices medicine (under the supervision of a physician), performs examinations, provides diagnoses, and that requires licensure. The AAO notes that the petitioner refers to the position as a physician's assistant; however, the proposed position does not require licensure and the record does not reflect that the beneficiary is licensed as a physician's assistant. See Article 131-B NYS Medicine Education Law §§ 6540-6548.

To determine whether the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(1) - a bachelor's or higher degree or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the particular position - the AAO turns to the 2006-'07 *Handbook's* discussion of the educational requirements for medical assistants. The *Handbook* states the following regarding the education and experience requirements imposed on those who seek these jobs:

Most employers prefer graduates of formal programs in medical assisting. Such programs are offered in vocational-technical high schools, postsecondary vocational schools, and community and junior colleges. Postsecondary programs usually last either 1 year, resulting in a certificate or diploma, or 2 years, resulting in an associate degree. Courses cover anatomy, physiology, and medical terminology, as well as typing, transcription, recordkeeping, accounting, and insurance processing. Students learn laboratory techniques, clinical and diagnostic procedures, pharmaceutical principles, the administration of medications, and first aid. They study office practices, patient relations, medical law, and ethics. Accredited programs include an internship that provides practical experience in physicians' offices, hospitals, or other health care facilities.

The *Handbook* does not indicate that the duties of medical assistants require a bachelor's level education in any specific specialty. Degrees from vocational schools and community colleges will equip an individual to work in this field. The petitioner has, therefore, failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has also failed to establish the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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)). In support of this assertion the petitioner submits a letter from a physician, [REDACTED] Director of Surgical Services at the Kingsbrook Jewish Medical Center who asserts that the Center makes it a practice to only hire physician's assistants with bachelor's degrees in biology or related medical fields. The petitioner also submits numerous job announcements for physician's assistant positions.

As the *Handbook* and the job announcements establish, however, physician's assistant positions require licensure. As the beneficiary is not a licensed physician's assistant and will not be performing the duties of a physician's assistant, these documents do not establish that a degree requirement, in a specific specialty is common to the industry in parallel medical assistant positions among similar organizations. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. To determine whether a petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, this criterion is not a factor as the petitioner has not submitted evidence to establish a history of hiring individuals with specialized degrees for similar positions. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The proposed duties are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a bachelor's or higher degree in a specific specialty. Nor are the duties so complex or unique that only an individual can perform them with a degree in a specific specialty. The evidence of record fails to distinguish the difference between the duties to be performed by the beneficiary and those normally performed by medical assistants and how the proposed duties are more specialized and complex than those of other medical assistants, which do not require a four-year degree in a specialty. The skills to perform the medical research duties of the position are routinely acquired from training received at community colleges that offer formal programs in medical assisting and that cover courses in anatomy, physiology, and medical terminology. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

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

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 sustained that burden.

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