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20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
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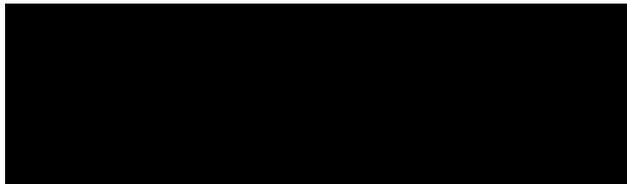
FILE: EAC 04 053 51022 Office: VERMONT SERVICE CENTER

Date: **SEP 06 2005**

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.

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 medical practice group that seeks to employ the beneficiary as a part-time medical and health services manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 part-time medical and health services manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 20, 2003 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: planning, directing, and coordinating business of healthcare delivery; working closely with physicians in practice group, handling all business affairs including personnel matters, billing and collection, budgeting, planning, equipment outlays, patient flow, accounting, regulatory compliance, and insurance; advising on business strategies; and deciding major policy decisions. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in business administration with a concentration in business management for the proffered position.

The director found that the proffered position was not a specialty occupation because the job is not a medical and health services manager; it combines the duties of a bookkeeper with an office manager. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position qualifies as a specialty occupation because it meets all of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states further that the proposed duties, which entail planning, directing, and coordinating the business of healthcare delivery at two of the petitioner's locations, are the complex duties of a medical and health services manager, as described in the *Handbook*. Counsel also states that the petitioner normally requires a degree for the performance of the proposed duties, as a medical doctor and a registered nurse with a bachelor's degree are currently performing such duties. Counsel states further that previously submitted information from the petitioner's managing partner indicates that the petitioner already employs a full-time bookkeeper and two full-time billing clerks, thereby demonstrating that the beneficiary would be overseeing the less complex duties rather than performing them herself. Counsel also states that, although the petitioner may discontinue its contract with [REDACTED], who handles the petitioner's medical billing and accounting, such duties are difficult and require advanced skill, and, according to the petitioner, qualify as specialty occupation work. Counsel submits supporting documentation including Internet job postings and invoices from [REDACTED].

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 *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. The AAO does not concur with counsel that the proffered position is that of a medical and

health services manager. In its *Handbook*, 2004-2005 edition, at pages 55-56, the DOL describes the job of a medical and health services manager as follows:

The structure and financing of healthcare is changing rapidly. Future medical and health services managers must be prepared to deal with evolving integrated healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work, and an increased focus on preventive care. . . . Increasingly, medical and health services managers will work in organizations in which they must optimize efficiency of a variety of interrelated services, for example, those ranging from inpatient care to outpatient followup care.

In smaller facilities, top administrators handle more of the details of daily operations. For example, many nursing home administrators manage personnel, finance, facility operations, and admissions, and have a larger role in resident care.

The petitioner has not persuasively established that the proposed duties are those of a medical and health services manager, as described above. In a letter dated January 14, 2004, the petitioner's managing partner states that the petitioner has four offices, with a full-time receptionist at each office, two full-time billing clerks and a bookkeeper. She goes on to say that four separate offices necessitate the services of a medical and health services manager, and that the beneficiary would work at two of its Brooklyn locations. She, however, does not specify at which two Brooklyn locations the beneficiary would work. Furthermore, the record contains no evidence of the petitioner's claimed offices, other than the office on [REDACTED] in Brooklyn, which is the address on the petitioner's registration certificate.¹ The record also contains no evidence of the petitioner's 23 employees or its gross annual income of \$2,300,000, as claimed on the petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In view of the foregoing, the petitioner has not demonstrated that a baccalaureate or higher degree in a specific specialty is required for the proffered position. The AAO agrees with the director that the duties of the position appear to be those of an office manager. No evidence in the *Handbook* indicates that a degree in a specific specialty is required for entry into an office manager position. Thus, the beneficiary has not established the first criterion.

Regarding parallel positions in the petitioner's industry, on appeal counsel submits Internet job postings for health services managers and related positions. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Some of the advertisers are job placement agencies. The actual worksites of the advertised positions, however, are not provided. Therefore, the exact nature of the advertised positions is not known. Other advertisements do not stipulate a baccalaureate degree in a specific specialty. Thus, the advertisements have no relevance.

¹ A website search of The Brooklyn Birthing Center at <http://www.brooklynbirthingcenter.com> finds no evidence that the petitioner has an office at [REDACTED], a Google search of the [REDACTED] addresses finds that these are the sites of the Beth Israel Medical Center and the Rodney Saint Women's Health Center, respectively; again, the record contains no evidence that the petitioner has offices at these addresses.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, 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. As the record indicates that the proffered position is a new position, the petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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. 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).

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.