



U.S. Citizenship
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FILE: WAC 02 216 51623 Office: CALIFORNIA SERVICE CENTER Date: SEP 21 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 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 residential care facility and seeks to employ the beneficiary as a technical writer. It endeavors 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 because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief asserting that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a technical writer. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Assist in the development of detailed patient plans;
- Prepare pre-admission evaluations of prospective residents, including meetings with proposed residents/patients, their families and/or existing care providers and healthcare providers;
- Compose program plans, proposals, reposts and opinions for submission to various insurers and governmental agencies;
- Prepare care plans and individual habilitation care plans based upon each client’s needs;
- Develop detailed patient/resident care plans to provide the highest level of care;
- Review and evaluate existing patient care plans to ascertain the appropriateness of existing plans in accordance with current and on-going patient observation;
- Review daily patient plans and chart notes made by the support staff;
- Assist in teaching patients with basic living skills;
- Maintain the day-to-day operations of data handling ensuring minimal errors and that progress notes and medical data are properly collated and documented;
- Coordinate all health care providers necessary to provide the optimal level of care and supervision of patients;

- Supervise various health care providers to make certain that the needs of each resident are met;
- Prepare written reports and instructions to support staff outlining the health care instructions for each patient as prescribed by staff and outside healthcare professionals;
- Prepare a newsletter for distribution to the families of residents discussing healthcare issues that affect the developmentally disabled, medical data, and news about the petitioner's facilities and programs offer;
- Prepare program plans, proposals, reports and opinions for submission to various agencies, insurers and other interested parties;
- Prepare quarterly reports for staff use in consulting with psychologists and psychiatrists;
- Interact with resident's families to assure that their observations are acknowledged and their requests met;
- Inspect facilities to determine compliance with government regulations;
- Review, evaluate, and inspect existing policies, procedures and programs to ascertain compliance with governmental laws, regulations, and policies, with preparation of reports to management detailing findings and necessary modifications to retain compliance with state and federal regulations;
- Assist with the preparation of all documents supportive of any permit and regulatory applications to be submitted to city, county, state and federal agencies; and
- Prepare recommendations to management detailing all necessary modifications to facilities, including cost analysis, personnel requirements necessary to accomplish the modifications, the length of time necessary to accomplish the recommended modifications and the means of implementing them while providing patient care.

The petitioner states that it requires a minimum of a bachelor's degree for entry into the proffered position, but does not state that the degree need be in any particular educational discipline.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. 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 an industry 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 information about the duties and educational requirements of particular occupations. The duties of the proffered position are not those of technical writers as asserted by the petitioner. The *Handbook* notes that:

Technical writers put scientific and technical information into easily understandable language. They prepare scientific and technical reports, operating and maintenance manuals, catalogs, parts lists, assembly instructions, sales promotion materials, and project proposals. They also plan and edit technical reports and oversee preparation of illustrations, photographs, diagrams, and charts. *Science and medical writers* prepare a range of formal documents presenting detailed information on the physical or medical sciences. They impart research findings for scientific or medical professions, organize information for advertising or public relations needs, and interpret data and other information for a general readership.

The duties of the proffered position do not coincide with those of technical writers, or science and medical writers. The beneficiary would perform a variety of duties within the petitioner's business environment including those of an intake coordinator, care provider teaching basic living skills to residents, and a quality assurance coordinator while performing other administrative functions. The writing to be performed by the beneficiary is incidental to these duties and is not for the purpose of detailing information on the physical or medical sciences, reporting research findings to the scientific or medical communities, or interpreting technical data and other information for general readership. The *Handbook* does not indicate that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the proffered position. The petitioner has failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support of that assertion submitted three statements from other healthcare facilities who state that they employ technical writers in similar positions and require a bachelor's degree for entry into the positions. None of the statements indicate, however, that a degree in a specific specialty is required for entry into the position. Furthermore, statements from three healthcare facilities are insufficient in scope to establish an industry wide educational requirement for the proffered position. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree for the proffered position, and offers no evidence in this regard. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties detailed are routinely performed in the industry by individuals with less than a baccalaureate level education in a specific specialty. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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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 and the appeal shall accordingly be dismissed.

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