



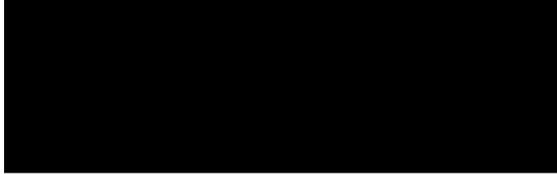
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U.S. Department of Justice

Immigration and Naturalization Service

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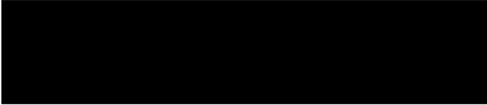
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC-01-052-50425 Office: California Service Center

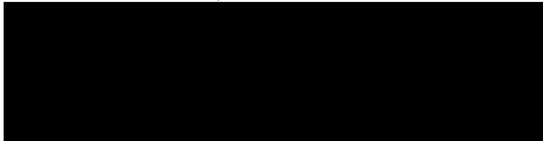
Date: JUL 10 2002

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a skilled nursing facility with 100 employees and a gross annual income of \$3.3 million. It seeks to employ the beneficiary as a scientific recorder for a period of four years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an 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.

The director denied the petition because the duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. On appeal, counsel states that the proffered position is similar to that of a medical assistant or medical research assistant. Counsel further states that the proposed duties are so complex that a baccalaureate degree in a medical-related field is required.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The position requires the candidate to have a working knowledge of medical technology and terminology . . . assembling and auditing of discharged resident records. Document the deficiencies on a lack slip for physicians, nurses, therapists, dieticians and any other discipline responsible for entries of medical records. The position requires the ability to comprehend medical records and advise persons responsible for documentation of the

record where the deficiencies are for completion. The responsibilities are also to document each discharge in the discharge/analysis log. Record all the information with the exception of the diagnosis. Duties further include compiling death certificate records and record the cause of death. The position further requires responsibilities for accepting and answering subpoenas in accordance to subpoena procedures.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position would normally require a baccalaureate degree in a medical-related field. The proffered position appears to be that of a medical records and health information technician. In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, the Department of Labor (DOL) describes the job of a medical records and health information technician as follows:

Medical records and health information technicians begin to assemble patients' health information by first making sure their initial medical charts are complete. They ensure all forms are completed and properly identified and signed, and all necessary information is in the computer. Sometimes, they communicate with physicians or others to clarify diagnoses or get additional information.

Technicians assign a code to each diagnosis and procedure. They consult classification manuals and rely, also, on their knowledge of disease processes.

A review of the DOL's Handbook, finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a medical records and health information technician. Medical records and health information technicians entering the field usually have an associate degree from a community or junior college. It is also noted that, in response to counsel's argument that the proffered position is that of a medical assistant, a review of the Handbook also finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a medical assistant. Medical assistant programs are offered in vocational-technical high schools, postsecondary vocational schools, community and junior colleges, and in colleges and universities. Postsecondary programs usually last either one year, resulting in a certificate or diploma, or two years, resulting in an associate degree. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as medical technology, for the offered position. Third, although counsel argues that the Service has previously approved cases for medical assistants/medical research assistants, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Beyond the decision of the director, the petitioner's labor condition application was certified on January 9, 2001, a date subsequent to December 1, 2000, the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. It is also noted that the record does not contain an evaluation of the beneficiary's credentials from a service which

specializes in evaluating foreign educational credentials as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(3). As this matter will be dismissed on the grounds discussed, these issues need not be examined further.

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.