

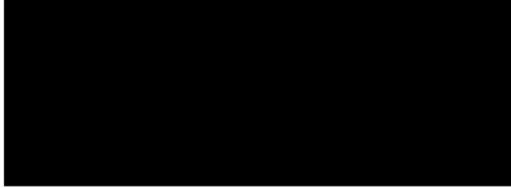


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U.S. Department of Justice
Immigration and Naturalization Service

APPEALS OF DECISIONS BY
OFFICIALS OF THE SERVICE
AND OF NATURALIZATION

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



File: WAC-01-041-53864 Office: California Service Center

Date: JUN -4 2002

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)

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 medical services business with two employees and a gross annual income of \$250,000. It seeks to employ the beneficiary as a medical coordinator for a period of three 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, in part, that a review of the Department of Labor's Dictionary of Occupational Titles (DOT) and its Occupational Outlook Handbook (Handbook) finds that the proffered position is a specialty occupation. Counsel also submits opinions from industry experts in support of her claim.

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:

Plan and coordinate hospital services for Arabic speaking patients receiving medical treatment, Analyze patients' medical data from medical records, Consult with medical professionals with regards to patients' needs, counsel patients to reduce anxiety from medical procedure, coordinate in and out-patient hospital services for patients, Advise patients after medical treatment.

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 beneficiary is a health services manager, an occupation that would normally require a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration, or a bachelor's degree for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations. (It is also noted that physician's offices and some other facilities may substitute on-the-job experience for formal education.) Counsel asserts that the DOL has determined that the proffered position is a specialty occupation. However, a reference in the DOL's DOT, Fourth Edition, 1977, standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the DOL in the various editions of the Handbook. The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This

is because it provides specific and detailed information regarding the educational and other requirements for occupations.

In its Handbook, 2002-2003 edition, the DOL describes the job of a 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 follow-up 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 record reflects that the petitioner, which is a medical services business, employs two persons and has a gross annual income of \$250,000. The proposed duties of the medical coordinator are not those of health service manager, as described above. For example, there is no evidence that the position offered includes complex health service managerial duties such as managing personnel, finance, and facility operations.

The duties that the petitioner endeavors to have the beneficiary perform are primarily those of a medical assistant. In contrast to the description of a health services manager, in its Handbook, the DOL describes the position of a medical assistant as follows:

The duties of medical assistants vary from office to office, depending on the office location, size, and specialty. In small practices, medical assistants usually are "generalists," handling both administrative and clinical duties and reporting directly to an office manager, physician, or other health practitioner.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a medical assistant position rather than a health services manager position. For example, the petitioner states that the beneficiary will "[p]lan and coordinate hospital services for Arabic speaking patients receiving medical treatment" and "coordinate in and out-patient hospital services for patients . . ." Such duties are not duties normally associated with a

medical services manager. 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 dental medicine and surgery, for the offered position. Third, 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.

Counsel has provided three letters from individuals involved in the medical industry. Two of the three writers state that the usual requirement for positions such as the proffered position is a baccalaureate degree in a medical-related field. Two letters are insufficient evidence of an industry standard. The writers have not provided evidence in support of their assertions. In addition, none of the writers have indicated the number or percentage of medical coordinators who hold such degrees.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The job fits the description of a medical assistant, rather than a health services manager. According to the DOL in its Handbook, there is no requirement of a baccalaureate or higher degree in a specialized area for employment as a medical assistant. Medical assisting programs are offered in vocational-technical high schools, postsecondary vocational schools, community and junior colleges, and colleges and universities. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background. 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 labor condition application submitted by the petitioner was not certified by an authorized Department of Labor official pursuant to 8 C.F.R. 214.2(h)(4)(i)(B)(1). As this matter will be dismissed on the grounds discussed, this issue 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.