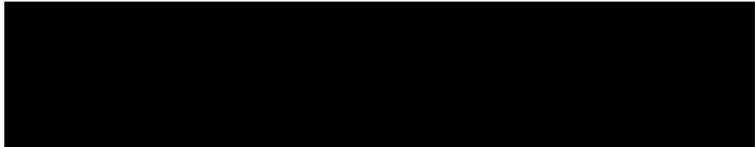


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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 MASS. 3/F  
Washington, D.C. 20536



AUG 28 2003

File: EAC 02 102 52857 Office: VERMONT SERVICE CENTER Date:

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:



**PUBLIC COPY**

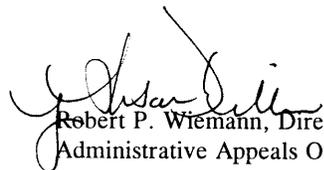
INSTRUCTIONS:

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a medical office that provides healthcare to the general public. It has seven employees and a gross annual income of approximately \$450,000. The petitioner seeks to employ the beneficiary as a medical writer/researcher for a period of three years. The director denied the I-129 petition on the grounds that the proffered position failed to qualify as a specialty occupation, and that the petitioner had failed to submit a properly filed and endorsed Labor Condition Application (LCA).

On appeal, counsel submits a brief. Counsel states, in part, that the proffered position is a specialty occupation, and that the position requires the services of a medical writer, or technical writer, as defined in the U.S. Department of Labor's *Occupational Outlook Handbook*, 2002-03, (*Handbook*). Counsel further indicates that the beneficiary is qualified to perform the duties of the proffered position. Counsel also submitted an LCA establishing that the LCA was properly filed and endorsed.

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), 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 Immigration and Nationality Act (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:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

In support of its I-129 petition, the petitioner detailed the duties of the proffered position as follows:

At the present time, we are in urgent need of a medical writer/researcher who will be responsible for compiling and maintaining complete medical reports and related documentation of the patients. The duties will include: examining patient's records, interview charts, physician reports and test results to compose complete medical reports for the ultimate approval and execution by the treating physician, thus enabling the medical staff to focus on the medical needs of patients and to provide better treatment; obtaining the medical significance of patient's injuries or disease, in order to write reports to be used by the Worker's Compensation Board, employer's insurance companies, Medicare and Medi-cal, and by other physicians and medical specialists; keeping up to date on the latest medical research results and utilizing the medical library to perform the duties; coordinating medical care evaluation and developing criteria and methods for such evaluation/reports.

Subsequent to the filing of the initiating petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner provide evidence that a baccalaureate degree is a standard minimum requirement for the proffered position, a copy of the job announcement for the offered position, a list of other medical writer/researchers employed by the petitioner with their educational backgrounds, industry job listings for similar positions, and a detailed statement of duties with a breakdown of the number of hours the beneficiary would devote to particular tasks. In response to this request, the petitioner provided the following:

The company is currently recruiting a Medical Writer/Researcher who possesses the skill and knowledge they [sic] require to provide a complete analysis of the patient's illness or injury. More specifically, the medical writer will analyze the medical significance of the injury or disease. She will write reports to be used by the Workers Compensation Board, Employer's insurance companies, Medicare and Medi-Cal.

Based on all of the information supplied, the writer will keep up to date on the latest medical research results and utilize the medical library to perform the research necessary to make a diagnosis on the cases that she is referred to. She will utilize medical journals, text books and medical research materials to obtain the analysis and evaluation of the patient's condition. The amount of time spent on research will be determined by the extent of the injuries or rarity of the diseases incurred for each case. Due to the

complexity of the work described above, the company requires a degree of Doctor of Medicine for its candidates. The position requires a strong medical background in order to understand the terminologies. This knowledge can only be obtained by attending medical school. Ms [REDACTED] will work full time at 40 hours per week and the percentage of time she will spend on each duty is as follows:

- 30% of time will be spent on analyzing the medical history of each patient in order to provide a complete analysis of the patient's injury or disease;
- 30% of time will be spent writing reports which will be used by the Workers Compensation Board, Employer's Insurance Companies, Meidcare and Medi-Cal;
- 20% of time will be spent researching and keeping up to date on the latest medical research results by utilizing medical journals, text books and other medical research materials; [and]
- 20% of time will be spent documenting the patient's illness or disease, medical history and physical examinations in order to formulate the strongest method of treatment for the patient.

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 states that the proffered position is that of a technical writer as defined in the *Handbook*:

*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.

*Id.* at 146. The duties set forth for the proffered position do not coincide with those of technical writers, or science and medical writers. The beneficiary would spend approximately 60 percent of her time reviewing medical records and preparing reports to be submitted to administrative agencies and insurance companies. Twenty percent of her time would be consumed documenting patients' medical histories, and the remaining 20 percent performing related research in medical literature. The writing done by the beneficiary is not for the purpose of reporting research findings to the scientific or medical communities, but to present physician's findings to the aforementioned administrative agencies and insurance companies. The record is not clear as to whether those writings would be used to present medical opinion, or simply for administrative tasks such as billing support or the preparation of treatment summaries. It is clear, however, that the beneficiary's writings would be done under the supervision of her physician employer, and restate the physician's findings to those entities. The petitioner has not established that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the proffered position. Indeed, many of the cited duties are performed by nurses and/or medical records and health information technicians. Those positions do not require a minimum of a bachelor's degree, or its equivalent, for entry into the position. The petitioner has, therefore, failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Second, the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The petitioner provided three job advertisements indicating that college degrees were required for medical writer positions. The positions advertised, however, were not similar to the proffered position, nor were they from similar organizations.

Third, the petitioner has not established that it normally requires a degree, or its equivalent, for the position. Finally,

the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized or complex that the knowledge required to perform those duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent.

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

It should further be noted, that even if the proffered position were deemed to be a specialty occupation, the petitioner failed to establish that the beneficiary is qualified for the position. In order to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria as outlined at 8 C.F.R. § 214.2(h)(4)(iii)(c):

(1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

(4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In the petitioner's response to the director's request for evidence, counsel stated that, due to the complexity of the offered position, the petitioner required candidates for the position to hold a Doctor of Medicine degree. The beneficiary apparently holds a Doctor of Medicine degree from the Philippines. There is nothing in the record, however, to establish that the beneficiary's foreign education is equivalent to a Doctor of Medicine degree from a regionally accredited college or university in the United States, nor does the record establish that the beneficiary meets any of the other criteria for qualification.

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.