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ADMINISTRATIVE APPEALS OFFICE
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Washington, DC 20536



DEC 23 2003

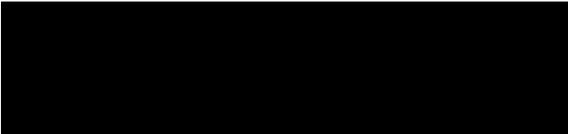
File: WAC 01 235 57834 Office: CALIFORNIA SERVICE CENTER

Date:

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:



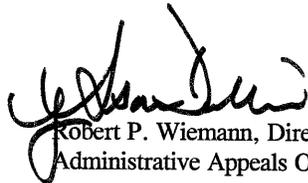
INSTRUCTIONS:

This is the decision 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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that 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 Director, California Service Center, denied the nonimmigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a home health and rehabilitative services company. It has 53 employees and a gross annual income of \$1,400,000. It seeks to temporarily employ the beneficiary as a director of clinical records for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the proffered position is a specialty occupation based on the petitioner's job description that required applicants have hold a general education degree.

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:

[A]n 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.

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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the Nebraska Service Center on July 16, 2001, the petitioner identified the position as director of clinical records and described the duties of the proffered position as follows:

1. Process daily visit schedule of nurses and check against progress notes and other documentation as required to ensure accuracy in the number of visits claimed by nurses;
2. Logs [sic] all visits daily, classified according to discipline and inputs [sic] into the computer preparatory to billing/payroll;
3. Prepare folder for the charts of patients newly evaluated;
4. Sort and file all charts/medical records in chronological order;
5. Monitor and keep track of all medical records/charts taken out for review and ensure that they are returned as taken;
6. Ensure that charts of all patients are readily available at all times;
7. Audit patient's charts periodically.

The petitioner also submitted a certified Labor Condition Application (LCA) ETA Form 9035 for the job category of medical and health services manager.

On October 9, 2001, the director requested further evidence to establish any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). In particular, the director asked for a more detailed explanation of the beneficiary's duties, the employment histories for employees previously in the proffered position who had baccalaureate degrees, and evidence that the petitioner and its competitors normally required a baccalaureate degree for entry into the proffered position. In addition, the director noted that the job classification on the LCA differed from the job title listed on the I-129 petition, and requested that the petitioner submit a LCA with the proper job title.

In response, the petitioner submitted a job description for the position. The academic specifications listed on the description were "general education degree (GED); or high school diploma with one to three years related experience and/or training." In addition, the petitioner submitted a second LCA, dated October 28, 2001, for the position of director of clinical records.

On February 18, 2002, the director denied the petition. The director noted that the petitioner had not established any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). She drew attention to the fact that the submitted job description listed the academic requirement of the position as a general education degree (GED) or a high school diploma.

On appeal, counsel states that the petitioner normally requires a baccalaureate degree for the position. Counsel submits no evidentiary documentation to establish this assertion. Counsel also equates a general education degree to a baccalaureate degree. Finally, the petitioner refers to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification on health information and medical record administrators which states that individuals in that job category have bachelor's degrees.

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). The job description submitted by the petitioner clearly establishes that a general equivalency degree, which is the equivalent of a high school degree is sufficient academic preparation for the proffered position. Counsel's reference to the proffered position being analogous to a health information and medical record administrators is not found to be well-founded. The proffered position appears to be for an employee of a home health placement agency, while the *Handbook* classification is for persons operating with medical units or facilities often at a management level.

The petitioner has submitted no information on the hiring practices of similar firms for parallel positions. Although counsel states that the petitioner requires the holders of the proffered position to have a baccalaureate degree, he submits no documentation to establish this assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). With regard to the complexity of the job duties, the list of job duties submitted by the petitioner in the original petition contains no duties viewed as either specialized or complex. The petitioner has provided no additional explanation of the duties that would establish the complex or specialized nature of the duties.

The petitioner has failed to establish that any of the four criteria 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, pursuant to 8 C.F.R. 214.2 (h)(4)(i)(B)(1), the petitioner had to obtain a certified LCA for the director of clinical records position prior to filing the I-129. Based on the petitioner's submission of the second LCA document on October 28, 2001, the petitioner has not met the regulatory guidance for the submission of the LCA. Even if the petitioner had established that the proffered position was a specialty occupation, the late submission of the correct LCA would have mandated the denial of the instant 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.