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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



File: WAC-02-196-51429 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

DEC 30 2003

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:



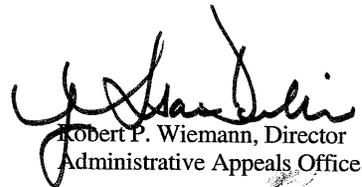
INSTRUCTIONS:

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 nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a surgery center with 15 employees and an approximate gross annual income of \$2 million. It seeks to employ the beneficiary as a medical clinic administrator for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

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 nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the proposed duties, which include the ongoing review of the quality of medical care delivery to patients and the supervision and evaluation of the petitioner's medical, nursing, and clerical personnel, are those of a medical and health services manager, a position that requires a baccalaureate degree in a specific specialty.

Counsel's statement on appeal is not persuasive. The AAO 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 AAO considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

This individual will be charged with the analysis of current operations and the development of improved business management methodologies, with particular focus on the medical office services personnel. She will be responsible for gathering, reviewing and evaluating operational data to develop methods to improve quality of service, increase efficiency of operations and reduce production costs. Upon evaluation of the duties and responsibility levels of each position, the Administrator will be charged with directing and coordinating the activities of our medical office staff. This individual will direct the updating or restructuring of job descriptions as well as the development of improved office policies and procedures. In view of the advanced level of autonomy involved in this position and the unique requirements of a medical facility, we are seeking an individual with background both in medical administration as well as in medicine.

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 AAO does not agree with counsel's assertion 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. In this case, the beneficiary does not hold a degree in any of these specialties nor does the position require such a degree. Rather, she holds a foreign degree in general medicine and, according to the employment letter dated May 20, 2002, the beneficiary practiced medicine prior to her entry to the United States.

Upon review of the record in its entirety, the record indicates that the proffered position is primarily that of a medical assistant. The Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 314, describes medical assistant positions, in part, as follows:

Medical assistants perform routine administrative and clinical tasks to keep the offices of physicians, podiatrists, chiropractors, and optometrists running smoothly. . . .

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. . . .

Furthermore, the California Business & Professions Code 2069 states, in part, as follows:

"Medical assistant" means a person who may be unlicensed, who performs basic administrative, clerical, and technical supportive services in compliance with this section and Section 2070 for a licensed physician and surgeon or a licensed podiatrist, or group thereof, for a medical or podiatry corporation. . . .

The medical assistant shall be issued a certificate by the training institution or instructor indicating satisfactory completion of the required training.

A review of the DOL's *Handbook* at page 315 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a medical assistant. Most employers prefer graduates of formal programs in medical assisting, which are offered in vocational-technical high schools, postsecondary vocational schools, community and junior colleges, and in colleges and universities. 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, although the petitioner has been established since 1985, it has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as medicine, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. 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.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

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.