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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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



File: SRC-02-090-52298

Office: TEXAS SERVICE CENTER

Date: MAY 01 2003

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**

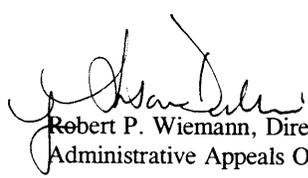
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office 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 the Bureau of Citizenship and Immigration Services (Bureau) 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 medical clinic with nine employees and a gross annual income of \$479,405. It seeks to employ the beneficiary as a client service 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.

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 the proposed duties are so complex that a baccalaureate degree is required. On appeal, counsel states, in part, that the proposed duties, which require "the application of intelligent judgements in the development and review of standard clinical pathways for patient's illness," are so complex that a baccalaureate degree is required. Counsel submits a "position opening notice" from another healthcare business to support his claim that the proffered position requires such a degree.

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

[S]he will ensure the quality and safe provision of healthcare services by timely managing the computer entry of data & filing medical records in charts. She will conduct timely billing and collection of services rendered according to Medicare requirements. She will likewise coordinate with all staff to ensure all data and medical records requirements are in compliance with regulations and organizational policies and procedures. Part of her responsibilities also include providing other staff with clerical and administrative support; she remains current and updated on all new rules and regulations that influence area of responsibility like Medicare, Medicaid, managed care, etc. requirements; Recommends changes in policies and procedures as appropriate; Participates in disseminating new rules, regulations, policies and 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 Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in nursing or a related field. The proffered position appears to be primarily that of an office and administrative support worker supervisor or manager. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at pages 417-418, the Department of Labor (DOL) describes the job of office and administrative support worker supervisors and managers, in part, as follows:

These workers are employed in virtually every sector of the economy, working in positions as varied as *customer services manager, teller supervisor, and shipping-and-receiving supervisor*.

Planning the work of their staff and supervising them are key functions of this job. To do these effectively, the supervisor must know the strengths and weaknesses of each member of the staff, as well as the required level of quality and time allotted to each job.

After allocating work assignments and issuing deadlines, office and administrative support supervisors and managers oversee the work to ensure that it is proceeding on schedule and meets established quality standards.

Office and administrative support supervisors and managers usually interview and evaluate prospective clerical employees.

Office and administrative support supervisors and managers often act as liaisons between the clerical staff and the professional, technical, and managerial staff. This may involve implementing new company policies or restructuring the workflow in their departments. They must also keep their superiors informed of their progress and abreast of any potential problems. Often this communication takes the form of research projects and progress reports. Because they have access to information such as their department's performance records, they may compile and present these data for use in planning or designing new policies.

At page 418 of the Handbook, the DOL finds that most firms fill office and administrative support supervisory and managerial positions by promoting clerical or administrative support workers from within their organizations. 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 specific specialty such as nursing, for the offered position. Third, although the record contains one job advertisement from a healthcare business requiring a baccalaureate degree in any medical/health related field, one advertisement is not persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. In addition, the advertisement does not contain information regarding the prospective employer's organization. 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.

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.