

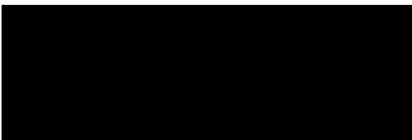
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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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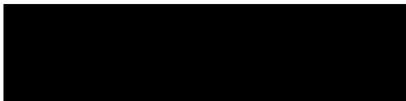


File: WAC-01-067-51295

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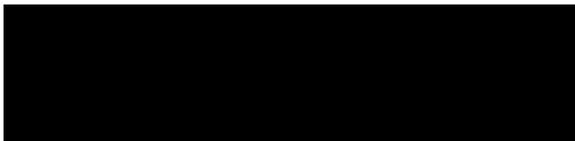
MAY 19 2003
Date:

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:



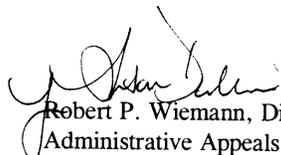
INSTRUCTIONS:

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 rehabilitation clinic with 12 employees and an approximate gross annual income of \$800,000. It seeks to employ the beneficiary as a medical writer 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 proffered position requires a baccalaureate degree. On appeal, counsel states, in part, that the proposed duties, which deal with human physiology, are so complex and technical in nature that a baccalaureate degree in a medical-related field is required.

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, in part, as follows:

[The beneficiary] 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 medical. Based on all of the information supplied, [the beneficiary] 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 patients' condition.

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 beneficiary would occupy a medical writer position requiring a bachelor's degree in a medical-related field. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 146, the Department of Labor (DOL) describes the job of a science and medical writer as follows:

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 general readership.

The record reflects that the petitioner, which is in the medical rehabilitation business, employs 12 persons and has an approximate gross annual income of \$800,000. The business in which the beneficiary is to be employed does not require the services of a medical writer who imparts research findings for scientific or medical professions, organizes information for advertising or public relations needs, or interprets data and other information for general readership.

The duties that the petitioner endeavors to have the beneficiary perform are record keeping duties, which are similar to the duties that an office nurse/registered nurse would perform in a medical clinic. In contrast to the description of a medical writer, at page 268 of the *Handbook*, the DOL describes the position of an office nurse as follows:

Office nurses care for outpatients in physicians' offices, clinics, surgicenters, and emergency medical centers . . . Some also perform routine laboratory and office work.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of an office nurse/registered nurse rather than a medical writer position. For example, the petitioner states that the beneficiary "will analyze the medical significance of the injury or disease" and "will write reports to be used by the Workers' Compensation Board, Employer's Insurance companies, Medicare and medi-cal." Such duties are not duties normally associated with a medical writer.

A review of the DOL's *Handbook*, 2002-2003 edition, at page 269, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a registered nurse. The three educational paths to nursing are as follows: Associate degree in nursing (A.D.N.), Bachelor of Science degree in nursing (B.S.N.), and diploma. The *Handbook* further states that:

[S]ome career paths are open only to nurses with bachelor's or advanced degrees. A bachelor's degree is

often necessary for administrative positions, and it is a prerequisite for admission to graduate nursing programs in research, consulting, teaching, or a clinical specialization.

As the record does not demonstrate that the proffered position is an administrative position, or a graduate nursing program in research, consulting, teaching, or a clinical specialization, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations. 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 medicine/medical technology, for the offered position. Third, although the record contains various Internet job advertisements, none of the advertisements is persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. Some of the duties described in the advertised positions include "serve as the principle author of medical reports and medical manuscripts for a global human healthcare company" and "preparation of protocols, study reports, regulatory submissions and case report forms involving a variety of medical indications." The petitioner has not established that the complexity of the proposed duties described in the instant petition equal the complexity of the duties described in the advertised 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.

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 an office nurse, rather than a medical writer. 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.