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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.
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Washington, DC 20536



File: LIN 01 224 57142 Office: NEBRASKA SERVICE CENTER Date: MAY 19 2003

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:



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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, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Chicago staffing agency for registered nurses, licensed practical nurse, certified nursing assistants and caregivers. It has 15 employees and a gross annual income of \$300,000 dollars. It seeks to temporarily employ the beneficiary as a medical records administrator for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation or that the beneficiary was not required to take a licensing examination as a graduate of a foreign medical school prior to employment in the United States.

On appeal, counsel asserts that the position of medical records administrator is a specialty occupation and that the beneficiary will not be performing services as a member of the medical profession.

Section 214(i)(1) of 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 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.

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 first 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 20, 2001, the petitioner described the duties of the proffered position as follows:

Will oversee day-to-day operation of the medical records dept.; Will be responsible for training medical record designees (Technicians); Will supervise MRD's in preparing, documenting, storing and retrieving patients' records; Will analyze data and determine legitimacy of treatment, quality of care management.

In a cover letter, the petitioner also provided the following expanded job description:

Oversee day to day operations of Medical Records Department; Responsible for training medical records designee/s; supervise records technicians in preparing, analyzing records and documentations; Responsible for developing and implementing policies and procedures for documenting, storing, and retrieving information; Coordinate medical care evaluation with medical staff; Responsible for analyzing patient data and documentation to determine legitimacy of treatment, quality of care, justification of usage, utilization management and research; Responsible for proper implementation of government agency standards, ensuring compliance with accrediting agency guidelines regarding quality of care; Assists utilization review committee in the planning and holding of federally mandated quality assurance reviews.

The petitioner also stated that the proffered position required the services of an individual who possessed at least a bachelor's degree in the medical or biological sciences and prior experience in a medical or healthcare environment. The petitioner also stressed the importance of high level medical coursework to properly utilize the International Classification of Diseases (ICD) standard to index medical records, medical case reviews, ambulatory

and other medical care programs, as well as basic health statistics.

On November 4, 2001, the director asked for further information with regard to whether the proffered position was a specialty occupation. In addition the director stated that the beneficiary, as a graduate of a medical school, would be coming to perform medical services. The director requested evidence that the beneficiary had the proper licensure to perform services as a member of the medical profession in the United States.

In response, counsel submitted a document entitled "Personnel Class Specification" for the position of medical records administrator in the State of New Hampshire. The petitioner stated that it was a normal requirement that medical records administrators have at least a baccalaureate degree or its equivalent, and added:

As a medical records administrator of our company, [the beneficiary] will maintain accurate and complete medical records for each patient. He will compile and maintain complete medical records and related documentation for the doctor's reference, provide a complete analysis for the medical history and laboratory results and prepare reports to be submitted to other healthcare organizations that need such type of information. His position requires supervising three medical records assistants.

The petitioner stated that Section 212(j)(2) of the Act, as amended, did not apply to the beneficiary since he would not be engaged in any direct patient care activities. The petitioner also noted that the beneficiary is not a licensed doctor in the State of Illinois which also would preclude him from working as a physician.

On March 12, 2002, the director denied the petition. He noted that the State of New Hampshire documentation did not establish that the proffered position which was located in Illinois qualified as a specialty occupation. He noted that the same documentation also did not establish that an industry wide standard required all medical records administrators to possess a minimum of a baccalaureate degree or its equivalent. In addition, the director stated that the Bureau was not convinced that Section 212(j)(2) of the Act did not apply to the beneficiary. The director based this determination on the fact that the petitioner's description of job duties for the proffered position contained such phrases as "coordinate medical care evaluation with medical staff," and "responsible for analyzing patient data and documentation to determine the legitimacy of treatment, quality of care, justification of usage, utilization management and research."

On appeal, counsel asserts that there is no difference at all as to what state the intended employment is located when the controlling factor is an appreciation of the complexity of the duties and

functions of the proffered position. To support this assertion, counsel submits a document from the Indiana Career and Postsecondary Advancement Center, which outlines the educational preparation for a medical records administrator. In addition, counsel submits a copy of Form I-797A that he alleges is an approval of a H-1B petition for another medical records administrator position. Counsel reiterates assertions made in the response for further evidence by stating that the beneficiary will not perform services as a member of the medical profession because he will not be performing direct patient care, either as intern or resident as part of graduate medical education, or in a private medical practice or private or public health care institution. Counsel further states that even if the beneficiary is a foreign medical graduate, he can still engage in a specialty occupation such as a medical records administrator that does not involve patient care or teaching or research.

Upon review of the record, the petitioner has not presented a persuasive argument for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position as a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)

The Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

The classification of medical records administrator is only examined peripherally in the *Handbook* within the category of medical and health services managers. The basic duties of medical records administrators and comments on educational backgrounds are outlined on page 75 as follows:

The term "medical and health services manager" encompasses all individuals who plan, direct, coordinate, and supervise the delivery of health care.

. . . .

Clinical managers have more specific responsibilities than generalists, and have training or experience in a specific clinical area. For example, directors of physical therapy are experienced physical therapists, and most health information and medical record administrators have a bachelor's degree in health information or medical record administration. These managers establish and implement policies, objectives,

and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

With regard to educational or training requirements, the *Handbook* states the following:

A master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations. Physicians' offices and some other facilities may substitute on-the-job experience for formal education.

To the extent that the *Handbook* indicates that most medical records administrators have bachelor degrees in a specific specialty, it would appear that the job of medical records administrator does require a bachelor degree as a minimum for entry into the profession. Nevertheless, a question remains as to whether the proffered position is actually that of a medical records administrator who will supervise three technicians on the petitioner's staff. As documented by the website for the American Health Information Management Association (AHIMA), work places for health information managers or medical records administrators and technicians are identified as: hospitals, managed care organizations, long term care facilities, behavioral health facilities, consulting and law firms, information system vendors, ambulatory care facilities, rehabilitation centers, skilled nursing facilities, home care providers, government agencies, pharmaceutical companies, physician practices, and insurance companies. See <http://ahima.org/about/about.cfm>.

Given the size of the petitioner, and the nature of its business, and the fact that the petitioner does not appear to handle medical records, the record is not persuasive that the proffered position is actually that of a medical records administrator. In addition, the petitioner's emphasis on correct coding of diagnoses by the beneficiary, appears to suggest that the proffered position may also incorporate elements of a medical records technician position as described on page 288 of the *Handbook*. Such a position does not require a baccalaureate degree. Without more persuasive evidence, the petitioner has not established that the proffered position is that of a medical records administrator or that the actual position requires a bachelor's degree as entry into the position.

II. 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

- 8 C.F.R. § 214.1(h) (4) (iii) (A) (2)

A. Degree Requirement is Common to the Industry

Factors often considered by the Bureau when determining the industry standard include: whether the Department of Labor's (DOL) *Occupation Outlook Handbook* (*Handbook*) reports that the industry requires a degree, whether the industry's professional association has made a degree a minimum entry requirement, and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for a medical records administrator position were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner submitted no specific documentation, such as job listings in different geographic areas of the United States to establish what are the common educational requirements for actual medical records administrator positions. The generic descriptions of medical records administrators taken from the States of Indiana and New Hampshire documents submitted by the petitioner do not establish an industry standard. In addition, these documents indicate that the educational requirements can vary from a baccalaureate degree from an approved college or university with a major study in medical records science (New Hampshire) to getting a degree in a related field and taking a 12-month training program (Indiana). Neither document establishes that a baccalaureate degree in a specific specialty is the industry standard.

In addition, the petitioner submitted no documentation that any professional medical records or health information association has made a bachelor's degree a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly, the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, as noted previously, the record is not persuasive that the beneficiary will be working as a medical records administrator for the petitioner or will be working for other entities. Without clarification on the actual employer of the beneficiary, the duties of the actual position are not established on the record. The petitioner has not established that the position would involve duties seen as either

unique or complex that only an individual with a degree in a specific specialty could perform them.

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h)(4)(iii)(A)(3)

The petitioner described the position that the beneficiary would perform as a medical records administrator position within the petitioner's nursing staffing company. However, the list of duties appear to suggest that the beneficiary would perform such duties within a medical or health entity, similar to one of the facilities identified by the AHIMA and previously mentioned in Section I. As such, the record is not sufficient to establish that the petitioner is actually the employer of the beneficiary. It is noted that the actual employer of the beneficiary, as opposed to the entity that hires the beneficiary, needs to establish that a degree or its equivalent is required for the proffered position.¹

In addition the petitioner has submitted no information with regard to other employees with similar duties and their academic credentials. There is no information that the petitioner has hired individuals in the proffered position previously. Without more persuasive evidence, the petitioner has not established this criterion.

IV. The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree - 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)

To date the petitioner has placed no information on the record with regard to the specialized and complex nature of the proffered position. The documents submitted for the record from state publications or career resource centers contain work duties that appear to be generic and representative of many medical records administrator positions. In addition, as noted previously, the record is not persuasive as to the actual location of the proffered position. Without more information as to the actual employer, and items, such as the volume of medical files held by the employer, the specific technology involved in the tracking and safeguarding

¹ In *Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000), the court held that the Bureau reasonably interpreted the statute and the regulations when it required the petitioner to show that the entities ultimately employing foreign nurses require a bachelor's degree for employees in that position. The court found that the degree requirement should not originate with the employment agency that brought the nurses to the United States for employment with the agency's clients. While this decision was directed at nurses, it can be applied to other employment classifications.

of medical files in the actual position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

The second issue in this proceeding is whether the beneficiary, as a member of the medical profession, is required to pass a licensing examination as outlined in section 212(j)(2) of the Act in order to perform the proffered position. Upon review of the generic duties of medical records administrators as outlined by the States of Indiana and New Hampshire documents, it does not appear that the beneficiary would be providing direct patient care if employed in a medical records administrator position. While the wording of some job duties identified by the petitioner mention terms such as analysis of patient data or coordination of medical evaluation with medical staff, these terms by themselves would not necessarily indicate direct patient care. As such, it does not appear that this issue is relevant to this proceeding.

Beyond the decision of the director, the evidence on the record is not persuasive that the beneficiary is qualified to perform the duties of the proffered position. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

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 reviewing the requirements for a baccalaureate degree in a specific specialty, both the State of Indiana and the State of New Hampshire clearly state that a baccalaureate degree in medical records administration, medical records science, or a degree in a related field with additional training is required to perform the medical records administrator position. (Emphasis added).

Although the petitioner has provided the beneficiary's transcripts from medical school for the record, these transcripts contain no evidence of any coursework or training in medical records administration. In addition the job duties outlined in the state documents submitted for the record suggest a much more concentrated training in medical records handling that the beneficiary would receive through a private or hospital medical practice. Finally there is no educational equivalency document in the record that establishes whether the beneficiary's medical studies in the Philippines have any equivalency to studies undertaken for a U.S. bachelor's degree in medical records administration. The petitioner has not provided sufficient evidence to establish whether the beneficiary is qualified to perform the duties of the proffered position. As the appeal will be dismissed on other grounds, this issue will not be discussed further.

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.