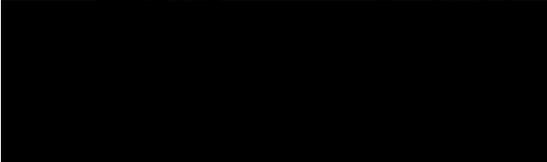


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U.S. Department of Homeland Security
Citizenship and Immigration Services

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

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prevent clearly and
invasion of



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File: LIN 01 224 56102

Office: NEBRASKA SERVICE CENTER

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:



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 which 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.

Handwritten signature of Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation that provides outpatient surgical services for the general public. It has 13 employees, a gross annual income of \$1,000,000, and seeks to employ the beneficiary as a surgical coordinator. The director determined that the proffered position did not qualify as a specialty occupation.

On appeal, counsel submits a brief and additional documentation. Counsel states, in part, that the proffered position is a specialty occupation due to the complexity of the duties to be performed. Counsel also submits a statement from the petitioner that outlines duties to be performed by the beneficiary that were not previously submitted.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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:

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.

When determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties of the proffered position were detailed as follows, with the filing of the I-129 petition:

The Beneficiary is being offered temporary employment in the position of Surgical Coordinator. The position requires theoretical and practical application of a body of highly specialized knowledge and an attainment of a baccalaureate degree **or the equivalent.** [Emphasis petitioner's]. Specifically, the beneficiary will be responsible for supervising work through planning and scheduling of surgical procedures, and the appraisal of support personnel. Emphasis will be placed on the coordination and performance of a variety of duties in the operating and recovery rooms to provide a broad range of healthcare delivery in an ambulatory setting. Other duties will include the supervision of personnel and the observance of proper techniques in the operating room, including but not limited to, preparing rooms with the appropriate instruments, sutures, supplies and equipment, opening sterile supplies and arranging sterile setups for operations. Lastly, the Beneficiary will be responsible for patient records, operative reports, files and other information on the appropriate

forms, to ensure that they are complete[d] properly.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. The director requested, in part, that the petitioner submit evidence that the proffered position qualified as a specialty occupation.

In response to the director's request, the petitioner submitted a statement from [REDACTED] M.D., the petitioner's medical director. Dr. [REDACTED] indicated that the petitioner was expanding the medical services it provided to include rapid opiate anesthesia detoxification and postoperative critical care to patients with chemical dependencies on an outpatient basis. Dr. Guiney stated that the petitioner was in need of a Surgical Coordinator to perform primarily administrative duties with regard to the services provided by the petitioner. With the exception of these statements, the petitioner did not expand on the duties to be provided by the beneficiary.

The director's decision of April 3, 2002, denied the I-129 petition. Specifically, the director found that the petitioner had not met the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A), and that the proffered position failed to qualify as a specialty occupation. On appeal, counsel submitted a new position description from the petitioner's medical director. The new duties for the proffered position were detailed as follows:

Please be advised that Renaissance Ambulatory Center is in the early stages of developing a patent for specialized treatment for heroin addiction. In this regard, we would like to hire the Beneficiary . . . for a temporary period. Specifically, the Beneficiary would be responsible for providing me with medical anesthesia and surgical expertise. She would be responsible for writing up medical procedure so that protocols may be set in developing the patent. This will all be based on the current work we do in preoperative, operative, and postoperative care we provide to patients with dependencies to heroin. In order to get FDA approval of our treatment plan, we need to document each and every one of our efforts. In order to do this, I need to rely on a Surgical Coordinator who is in possession of at least a Medical Doctor Degree. I will rely on the Beneficiary to prepare medical reports using her knowledge of medical procedures as well as basic medical expertise gained through her post-graduate training. Although the Beneficiary will not engage in work as a Medical Doctor, she will rely on the principles she learned in Biology, Biochemistry, Physiology, Medicine, Surgery, Pathology, Pharmacology, Microbiology, Laboratory

Diagnosis, Surgical Anesthesia, and Surgical Pathology in order to work as a Surgical Coordinator.

The Beneficiary will draft the medical procedure protocol and establish the surgical procedures in an effort to accelerate the accelerated detoxification of narcotic drug users. I am applying for a pattern [sic] on this rapid antagonist procedure of opiate addiction under anesthesia and the actual procedures include the following:

1. Anesthetize the patient[;]
2. Accelerate the patient's withdrawal to less than two hours by precipitating the withdrawal, controlling it;
3. At the end of this procedure, a small dose of medication is implanted into the patient;
4. After the patient wakes up from this two-hour procedure, the patient has received the equivalent to an eight-day detoxification treatment at a rehabilitation facility.

The duties described by the petitioner on appeal substantially change the nature of the position described with the filing of the I-129 petition, and in response to the director's request for evidence. Those duties will not be considered. The petitioner must establish that the position offered to the beneficiary at the time the I-129 petition was filed is a specialty occupation. See *Matter of Michelin Tire*, 17 I&N Dec. 248,249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Neither counsel nor the petitioner may now change the title of the position or duties associated with it while the petition is pending.

The petitioner has failed to qualify the offered position as a specialty occupation. The position is managerial and administrative in nature. The record does not establish, however, that the position meets any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The beneficiary would be responsible for planning and scheduling surgical procedures, supervising and appraising support and operating room personnel, insuring that the operating room contained proper surgical supplies and equipment, and maintaining patient records and operative reports. The performance of these duties is routine in nature and performed by a wide variety of healthcare personnel not requiring a baccalaureate level education. The petitioner has not established that: a baccalaureate or higher degree or its

equivalent is normally the minimum requirement for entry into offered position; a degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the duties of the position are so complex or unique that they can only be performed by an individual with a degree; the employer normally requires a degree or its equivalent for the position; or the position's 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.