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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



SEP 10 2003

File: WAC-02-084-50273

Office: CALIFORNIA 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:



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
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 residential care facility with seven employees and a gross annual income of \$600,000. 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 a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the proffered position, which is that of a medical technical writer, is extremely complex and thus requires a baccalaureate degree. Counsel cites *Matter of Desai*, 17 I&N Dec. 569 (BIA 1980) in support of his assertion.

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's

licensee/administrator described the duties of the offered position as follows:

She will compose program plans, proposals, reports and opinions for submission to various agencies, insurers and interested parties. She will write and compose plans for execution by the undersigned as the facility administrator, using notes which I will provide along with individual client charts, reports or opinions from other care professionals, and based upon her own research and contacts with various providers as needed. She will prepare Individual Nursing Care Plans and individual Habilitation Care Plans based upon each client's unique needs. She will also document daily notes for each client with Progress Reports on a Quarterly basis for use with consulting Psychologists and Psychiatrists. As the demand for written reporting has increased, this will provide the undersigned with greater freedom to carry out my principal administrative responsibilities, while delegating this important writing task to a qualified individual.

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 is a medical writer, an occupation that requires a degree in, or some knowledge about, a specialized field. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 146, the Department of Labor (DOL) describes the job of technical, science, and medical writers as follows:

Technical writers put scientific and technical information into easily understandable language. They prepare scientific and technical reports, operating and maintenance manuals, catalogs, parts lists, assembly instructions, sales promotion materials, and project proposals. They also plan and edit technical reports and oversee preparation of illustrations, photographs, diagrams, and charts. *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 a general readership.

The duties set forth for the proffered position do not coincide with those of technical writers, or science and medical writers. The beneficiary's duties include composing program plans, proposals, reports and opinions for submission to various agencies, insurers and interested parties, as well as preparing individual nursing care plans and individual habilitation care plans based upon each client's unique needs. The writing done by the beneficiary is not for the purpose of reporting research findings to the scientific or medical communities, but to compose various reports and opinions to the aforementioned administrative agencies and insurance companies. The record indicates that the beneficiary would be performing administrative tasks such as billing support and the preparation of treatment summaries. As such, the petitioner has not established that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the proffered position. Indeed, many of the cited duties are performed by nurses and/or medical records and health information technicians. Those positions do not require a minimum of a bachelor's degree, or its equivalent, for entry into the position. The petitioner, therefore, 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 physical therapy, 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.

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.