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U.S. Citizenship
and Immigration
Services



FILE: WAC 02 152 51594 Office: CALIFORNIA SERVICE CENTER Date: APR 09 2004

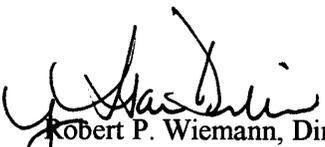
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a skilled nursing facility that seeks to employ the beneficiary as a health information analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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.

Citizenship and Immigration Services interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a health information analyst. Evidence of the beneficiary's duties includes: the I-129 petition and the petitioner's response to the director's request for evidence. According to the February 26, 2002 letter in support of the petition, the beneficiary would perform

duties that entail, in part: applying advanced clinical skills in accurately coding and documenting diseases, conditions and treatments; implementing clinical data validation measures and analyzing abnormal clinical findings, medications and procedures so that complications, co-morbidities, or valid operating procedures overlooked by a physician in a final diagnostic statement can be used to optimize hospital reimbursement; implementing the petitioner's health information system and record keeping procedures; organizing the petitioner's data management and analysis processes; acting as a secondary source of information on coding system regulations and any changes made by official agencies that affect coding information policies; reviewing diagnostic and procedure codes on all clinical data to make sure that the facility is using the most current diagnostic codes; and preparing statistical and narrative reports. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in medical or biological sciences, preferably in nursing, medicine, medical technology, healthcare administration, or any allied medical course.

The director found that the proffered position was not a specialty occupation because the job is a medical records or health information technician. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director erred in his decision, and that the proffered position is at a significantly higher level than that of a health information technician, and that it requires both analytical skills and knowledge of health care that could only be gained through acquiring a bachelor's degree.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *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." See *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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. There is not specific entry for a health information analyst. The position appears to encompass a number of the duties of a health information technician, but is not similar enough to be in that job classification. The proffered position, therefore, will need to be analyzed without the benefit of the *Handbook*.

Regarding parallel positions in the petitioner's industry, neither counsel nor the petitioner submitted any evidence regarding this element. Counsel did submit evidence from the American Health Information Management Association (AHIMA), but it does not directly address the issue of educational requirements. In looking at the AHIMA's website, however, one can become a Registered Health Information Administrator without a bachelor's degree in a specific specialty. One would have to earn a "certificate of completion in HIA [health information administration]" in order to take the certification exam if the applicant did not

already possess a bachelor's degree in health information administration. In response to the director's notice of intent to deny, counsel submitted four sample job descriptions from an unknown source, although they appear to have come from the AHIMA. None of them directly relates to the proffered position, and there is no reference to why they were included with the response, but each indicates that a bachelor's degree in health information management is required. If counsel is implying that these position descriptions equate to the proffered position, then he is also putting forth that the beneficiary would not be qualified for the position, as she does not have a degree in health information management. Regardless, the evidence on record does not indicate that a degree in a specific specialty is required for entry into the field of health information analysis. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The proffered position is a newly created position, so the petitioner is not able to meet this criterion.

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Most of the duties involve coding or reviewing coding of medical records and in some cases writing reports for management. This could be done by an individual with a background in healthcare that falls short of a baccalaureate level degree. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.