

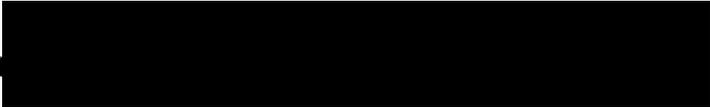


U.S. Citizenship  
and Immigration  
Services



FILE: WAC 03 227 50251 Office: CALIFORNIA SERVICE CENTER Date: *AUG 12 2004*

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 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

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**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 home health care provider that seeks to employ the beneficiary as a medical records administrator. 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 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 (CIS) 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 denial letter; and (3) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a medical records administrator. Evidence of the beneficiary's duties includes the I-129 petition and the petitioner's July 26, 2003 letter in support of the petition. According to this evidence, the beneficiary would perform duties that entail: developing and implementing policies and procedures for documenting, storing, and retrieving medical and insurance data; supervising staff in preparing and analyzing medical documents; developing and designing computer software; coordinating medical care evaluation with medical staff; developing and conducting training for healthcare personnel; and analyzing patient data for reimbursement. The petitioner indicated that a qualified candidate for the job would possess a bachelor of science degree in a health-related field.

The director found that the proffered position was not a specialty occupation. 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 concluded 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 duties of the proffered position are so complex that they can only be performed by an individual who possesses a bachelor's degree in a health-related field. Counsel also asserts that the *Dictionary of Occupational Titles (DOT)* indicates that a degree is required to enter into the position.

On appeal, counsel brings up the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2); however, it is concluded that the record fails to show that the proffered 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 this criterion include: whether the Department of Labor's *Occupational 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." 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. The AAO concurs with the director's assessment to the effect that the job duties parallel those responsibilities of a medical records technician. The proffered position also includes elements of the position of an administrative services manager. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, in a specific specialty is required for either of these fields.

Counsel's reference to the relevance of information from the DOT, which was subsequently subsumed by *O\*Net*, is not persuasive. The *O\*Net's* Job Zone category does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. A Job Zone category is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The record contains no documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the aspect of the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) that counsel addresses on appeal.

Counsel asserts that CIS has already determined that the position of medical records administrator is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the positions offered in the prior cases were similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior cases were similar to the proffered position or were approved in error, no such determination may be made without a review of the original record in its entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approvals of the prior petitions would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

The documentation on the record does not support any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has thus 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.