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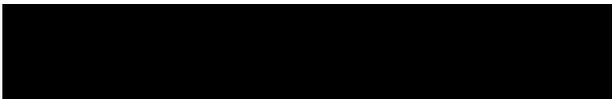
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FEB 24 2004

FILE: WAC 00 034 51583 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 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 management company that owns and operates over 40 convalescent care centers. It seeks to employ the beneficiary in a 99 bed convalescent hospital as a medical writer. The petitioner, therefore, 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 states that the proffered position of medical writer falls into the specialty occupation of technical writer. On the Form I-29B, counsel indicates that a brief and/or evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

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 (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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a medical writer. Evidence of the beneficiary's duties

includes: the I-129 petition and the petitioner's November 1, 1999 letter in support of the petition. According to this evidence, the beneficiary would perform duties that entail: compile and maintain complete medical reports and related documentation for doctors' reference and for submission to insurance companies. The petitioner further described the duties in stating that it needed a medical writer who possessed the skill and knowledge to provide a complete analysis of the patient's illness or injury based upon the physician's report, medical history and laboratory results. The petitioner indicated that a qualified candidate for the job would possess a degree in medicine.

The director found that the proffered position was not a specialty occupation because the petitioner had not submitted sufficient evidence to establish that a baccalaureate or higher degree was normally the minimum requirement for entry into the proffered position. 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 proffered position is analogous to that of technical writer that has been held by CIS to be a specialty occupation. Counsel further asserts that the position specifically requires a degree in medicine. Counsel submits no further documentation to substantiate these assertions.

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. The AAO does not concur with counsel that the proffered position is that of a technical writer. The duties as described appear to primarily involve the compilation of medical information produced by other medical personnel. The *Handbook* description of technical writers states that such writers develop scientific or technical materials, such as scientific and medical reports, equipment manuals, appendices, or operation and maintenance instructions. These duties are much more advanced and complicated than the compilation of medical notes and diagnoses for review by insurance companies and physicians. A more relevant *Handbook* classification could be that of medical records administrator or technician. The classification of medical records administrator is only examined peripherally in the *Handbook* on page 75 within the category of medical and health services managers. The *Handbook* does not indicate that this classification requires a degree in medicine, but states that health information and medical record administrators have a bachelor's degree in health information or medical record administration. In addition, the *Handbook* on page 289 indicates that employers usually require a two-year associate degree for entry into the position of medical record technician.

Regarding parallel positions in the petitioner's industry, the petitioner submitted no further documentation. The record also does not include any evidence from professional associations regarding an industry standard,

or documentation to support the complexity or uniqueness of the proffered position. 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) and (4) – the employer normally requires a degree or its equivalent for the position, and 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 record does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. In addition, the petitioner provided only a generic description of the duties of the position. The duties, which primarily consist of compiling medical diagnoses and medical notes, appear to be neither specialized nor complex. 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.

Beyond the decision of the director, the petitioner has not established that the beneficiary would be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. For example, the petitioner did not submit an educational equivalency document as required by 8 C.F.R. § 214.2(h)(4)(iii)(C). However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary's qualifications.

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.