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U.S. Department of Homeland Security
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Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**

[Redacted]

FILE: WAC 02 204 54554 Office: CALIFORNIA SERVICE CENTER Date: **FEB 25 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.

[Signature]
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 clinical research company that seeks to employ the beneficiary as a clinical research coordinator. 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 (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 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 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 clinical research coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 6, 2002 letter in support of the petition;

and the petitioner's June 25, 2002 response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: evaluating and tracking eligibility of patients for inclusion in studies; scheduling the patients for study procedures; collecting, evaluating and analyzing data from patient charts, medical records and interviews; obtaining and processing blood, urine and other clinical laboratory samples; performing physical exams, ECGs and phlebotomy; maintaining records; and following FDA and GCP guidelines. In the job description submitted on appeal, these same responsibilities were listed; in addition, however, a number of performance standards were included. These performance standards do not reference any of the purely medical aspects listed in the position responsibilities (i.e., performing physical exams and ECGs, etc.). The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in biology, nursing, or a field related to health science.

The director found that the proffered position was not a specialty occupation because the job could be performed by a registered nurse, a field that does not require a bachelor's degree.

On appeal, counsel states that the proffered position involves duties that are highly complex and cannot be performed by a person without 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 no specific entry for clinical research coordinators, and therefore, the AAO must rely on the other factors.

While neither counsel nor the petitioner submitted information about the industry's professional association, a review of the Internet site for the Association of Clinical Research Professionals, which certifies clinical research coordinators, as well as others in the field, is instructive. In order to take the Clinical Research Coordinator certification exam, one must have a high school diploma or equivalent, and have two years of full-time experience, or four years of part-time experience, as a clinical research coordinator. Clearly, this association has not made a bachelor's degree a requirement for certification in this field.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for clinical research coordinators and project coordinators. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the proffered position. Many of the advertisements are for large hospitals or large corporations, distinctly

different types of organizations than the petitioner. Thus, the advertisements have little relevance. The AAO notes that several of the advertisements state that the job requires an individual who is a registered nurse or possesses a bachelor's degree, and one listing states that a licensed practical nurse designation is acceptable. One can become a registered nurse without earning a bachelor's degree. No evidence, such as letters or affidavits, was submitted by others in the industry attesting that they only employ degreed individuals, nor was any evidence submitted 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) – the employer normally requires a degree or its equivalent for the position. The petitioner's letter of support submitted with the petition states that the company requires a bachelor's degree as an entry-level requirement, and that the beneficiary would be replacing an individual who has a bachelor's degree. The petitioner reiterated this statement in response to the director's request for evidence. The record, however, 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. Simply going on record without supporting documentary evidence is not sufficient. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion at 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. 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.