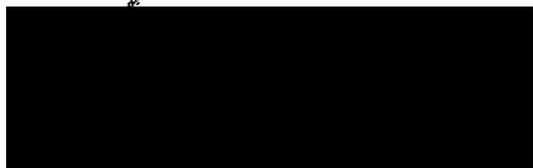


U.S. Citizenship  
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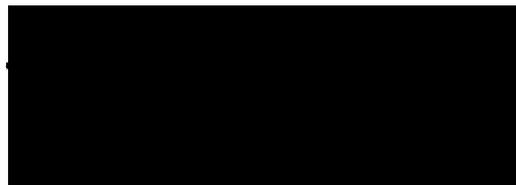


FILE: LIN 03 018 54711 Office: NEBRASKA SERVICE CENTER Date: JUL 08 2004

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:



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.

*Mari Johnson*

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 dental clinic. It seeks to employ the beneficiary as a medical records administrator, and to classify her 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, and because the beneficiary does not qualify to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional information.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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 proceedings 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 with attachments. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is a dental clinic seeking the beneficiary’s services as a medical records administrator. Evidence of the beneficiary’s duties includes the I-129 petition with attachment, and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would: plan and develop a dental health information system for a dental care facility (6 hours per week); administer the dental health information system consistent with the standards of an accredited health care system (12 hours per week); manage dental health records by developing and implementing policies and procedures for documenting, storing, and retrieving information for processing dental documents, insurance data, and correspondence (8 hours per week); coordinate dental care evaluation with the staff and develop the criteria and method for evaluation, and develop in service dental educational materials with instructional programs for the staff (6 hours per week); and analyze patient data for facility planning, quality patient care, risk management, and research (8 hours per week). The petitioner does not state that a degree in a specific specialty is required for entry into the proffered position, but states that the beneficiary is qualified to perform the duties of the position offered in that she holds the equivalent of a Doctor of Dental Surgery degree awarded by an accredited university in the United States.

The director denied the petition because the proffered position is not a specialty occupation, and because the petitioner did not qualify to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional information stating that the proffered position qualifies as a specialty occupation and that the petitioner is qualified to perform the duties of a specialty occupation.

Upon review of the record, the petitioner has failed to establish that the offered position meets the requirements of the above cited regulatory criteria. Factors often considered by CIS when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for medical records and health information technicians as discussed in the *Handbook*. The petitioner indicates that the position is that of an administrator or manager by title. The description of the duties submitted, however, is so vague and

generic that it is impossible to determine specifically what duties the beneficiary would perform on a daily basis. For example, she would plan and develop a dental health information system for a dental care facility; administer the dental health information system; and manage dental health records by developing and implementing policies and procedures for documenting, storing, and retrieving information for processing dental documents, insurance data, and correspondence. The beneficiary would also have some additional duties involving dental care evaluation and staff training. There is no indication as to what type of dental health information system would be planned or developed, or the complexities involved in establishing that system. Nor is there any indication of what tasks would be performed in establishing policies and procedures for processing documents and data. These tasks could be very complex in some medical facilities involving the management of numerous employees and an entire medical records department, or simply clerical in nature and normally performed by medical records and health information technicians in other facilities. It is also not possible to determine what duties would be performed in coordinating a dental care evaluation, monitoring quality of patient care, and assessing risk management. These duties also appear to be clerical in nature, or involve a quality assurance review that could be administered by non-professional staff. It is incumbent upon the petitioner to describe the duties of the proffered position in sufficient detail to allow an assessment of the actual duties to be performed, the complexity of those duties, and the minimum education required for performance of the duties. This, the petitioner has failed to do.

The *Handbook* indicates that medical records and health information technicians entering the field usually have an associate degree from a community or junior college. In small facilities, a credentialed medical records and health information technician sometimes manages the entire department. Thus, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner states that a degree requirement is common to the industry in parallel positions among similar organizations. In support of that assertion, the petitioner submitted five job advertisements for medical records managers/directors of health information systems. Five advertisements are insufficient in scope to establish an industry standard. Furthermore, none of the advertisements submitted are for organizations similar in nature to that of the petitioner, and none of them indicate that a degree in any particular discipline is required for the positions advertised. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does indicate that it normally requires a degree or its equivalent for the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). In support of this assertion the petitioner submitted a credentials evaluation indicating that a previous employee also held of Doctor of Dental Medicine degree. Assuming for the sake of argument that this is the case, the proffered position still does not qualify as a specialty occupation. The performance of the duties of the position must still involve the theoretical and practical application of a body of highly specialized knowledge. *Cf. Defensor v. Meissner*, 201 F.3d 388 (5<sup>th</sup> Cir. 2000). This position does not. As noted above, the duties of the position are routinely performed in the industry by individuals with educational backgrounds at less than a baccalaureate level.

Finally, the duties described appear to be routine in the industry for medical records and health information technicians. They are not so complex or unique that they can only be performed by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner has failed to establish that the proffered position is a specialty occupation as it fails to meet any of the above cited regulatory criteria. Accordingly, the AAO shall not disturb the director's denial of the petition in this regard.

Even though the director found that the duties of the proffered position were essentially those of an office manager, as opposed to a health services manager as asserted by the petitioner, the director held that the beneficiary's education did not qualify her to perform the duties of a health service manager. As previously discussed however, the duties appear to relate to those of medical records and health information technicians, not health service managers as asserted by the petitioner. Medical records and health information technician positions are routinely filled by individuals with less than a baccalaureate education. The petitioner holds a Doctor of Dental Surgery degree. She is, therefore, amply qualified to perform the duties of a medical records and health information technician. This portion of the director's decision is withdrawn.

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 and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.