

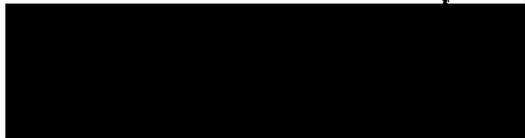
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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: EAC 02 118 52130 Office: VERMONT SERVICE CENTER Date: JUL 20 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

to 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 purports to be a clinical research organization. It seeks to employ the beneficiary as a medical safety officer, and endeavors 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. On appeal, counsel submits a brief stating that the proffered position qualifies as a specialty occupation.

The 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 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 safety officer. 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 evidence, the beneficiary would: provide expert and timely medical and regulatory review of Serious Adverse Event (SAE) reports; maintain a thorough understanding of "MIMC SOPs" and regulatory reporting regulations for investigational drugs, biologics, and devices; ensure compliance with "GCP" guidelines, FDA Code of Federal Regulations, and "ICH" standards; serve as the medical safety specialist on all projects; be responsible for the medical and regulatory content of all reports produced by the petitioner; review all incoming potential SAE reports for appropriate handling by the petitioner and review reports for consistency, accuracy, and clarity of the medical content of the report; prepare written narratives for inclusion in medical information write-ups; conduct follow-up on clinically important adverse events by contacting site investigators/study coordinators when necessary; provide after-hour medical emergency calls pertaining to "MIMC" projects; review and verify medical coding; train department staff on general drug safety matters, including current regulations; interact with department staff and all other company departments; contribute to discussions and propose solutions on company issues with personnel in therapeutic specialty groups, at client presentations, and meetings involving "MIMC"; interact with potential and existing clients to market and deliver the petitioner's services; provide medical review of protocols, "CRFs," investigator's brochures, package inserts, and overall "IND/NDA/PLA" documents, including patient narratives; and keep abreast of current developments in the field and maintain knowledge base by attending seminars, professional association meetings, and maintaining an industry and professional network. The petitioner requires a minimum of graduation from an accredited medical or pharmacy school for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are presented in such vague and generic terms, however, that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed. For example, the petitioner indicates that the beneficiary would:

provide medical and regulatory review of SAE reports; be responsible for the regulatory content of reports produced; provide written narratives for inclusion in medical information write-ups; and provide follow-up on clinically important adverse events by contacting investigators/coordinators. At no point, however, does the petitioner explain the nature and/or content of the SAE reports to be prepared and/or reviewed, the reason for any such reports, or what follow-up is required following the issuance of any such report. The record is insufficient to establish precisely what services the petitioner provides. The petitioner states in its letter of November 30, 2001, that it is a "global full-service clinical research organization utilizing high-tech and high-touch solutions to solve drug, biological, and device development challenges." The record does not contain any information, however, that would explain the type of services provided, the complexity of those services with regard to the duties to be performed by the beneficiary, or what type of "drug, biological, and device development challenges" the petitioner and/or beneficiary would encounter. The proffered position could well be one requiring the theoretical and practical application of a body of highly specialized knowledge. It could also be one requiring the services of medical/technical personnel having less than a baccalaureate level education. It is incumbent upon the petitioner to describe the duties of the proffered position in such detail as to permit an analysis of the day-to-day functions to be performed by the beneficiary. The petitioner must do more than simply quote or reference a job title from the *Dictionary of Occupational Titles*. This, the petitioner has failed to do. As such, it is impossible to determine whether: a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position; a degree requirement is common to the industry in parallel position among similar organizations; the duties of the offered position are so complex or unique that they can be performed by an individual with a degree; or knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has failed to establish that the offered position meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), (2), or (4).

The petitioner asserts that it normally requires a degree in a specific specialty for the offered position, and in support of that assertion offers the resume of another medical safety officer. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). That resume, however, is insufficient to establish the educational background of the referenced employee. The petitioner did not submit a copy of the employee's diploma or an equivalency evaluation of his foreign degree. Even if the petitioner's other medical safety officer possessed a qualifying degree, 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 (5th Cir. 2000). The duties of this position, as described, do not appear to do so.

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the I-129 petition shall not be disturbed.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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