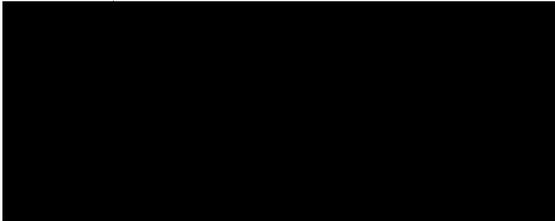


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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

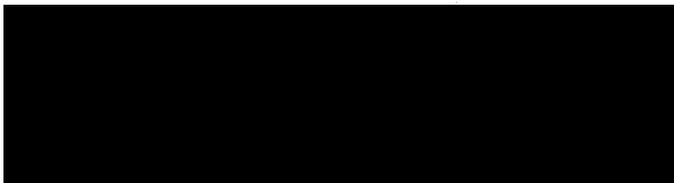


FILE: WAC 03 119 52292 Office: CALIFORNIA SERVICE CENTER Date: JUL 30 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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

for Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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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 corporation that provides pediatric occupational and physical therapy. In order to employ the beneficiary as a rehabilitation coordinator, the petitioner 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 on the basis that the proffered position is not a specialty occupation. On appeal, counsel submits a brief which asserts that the evidence of record establishes that the director's decision was erroneous and that the petition should have been granted.

As will be explained below, the AAO has determined that the director's decision to deny the petition was correct, as the evidence of record does not establish that the proffered position qualifies as a specialty occupation in accordance with any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO reached this determination on the basis of the entire record of proceeding before it, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the material submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's 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.

In the letter of support that it submitted with the Form I-129, the petitioner described itself as follows:

[The petitioner] is an outpatient Physical and Occupational Therapy group providing in-home therapy in Southern California and outpatient rehabilitation services and accurate follow through. We specialize in pediatric physical therapy and occupational therapy services for patients with a vast variety of diagnosis [sic]. We also provide prompt and centralized scheduling [of] appointments, case management, billing and collection.

In its response to the RFE, the petitioner described the proposed duties and their respective projected work time expenditures as follows:

- Assists the operations director in coordinating ongoing provision of rehabilitative services. (20%)
- She will schedule or facilitate interdisciplinary team in case conferences with all therapists, payers, and family members. (5%)
- She will participate in physician's meetings to report or resolve medical issues for caseload. (1%)
- She will formulate treatment plans, functional outcomes or goals and service delivery for referred clients in consultation with the director for operations. (10%)
- She will monitor hours of service to be delivered to client and report hours and subsequent changes to [the] operations director. (10%)
- She will communicate regularly with family, payer, and physician regarding client progress. (10%)
- She will monitor client, family, therapists and payer satisfaction with the program on a regular basis. (20%)
- Write accurate, complete, and clear documentation in accordance with [the petitioner's] regulatory, licensing, payer, and accrediting requirements. These duties include but [are] not limited to recording screenings, evaluations, daily treatment notes, progress notes,

and discharge summaries in accordance with [the petitioner's] procedures and within required time frames. (20%)

- Finally, she will administer fiscal operations, such as planning budgets, authorizing expenditures and [will] coordinate financial reporting. (4%)

The evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which provides for specialty occupation qualification of those positions whose normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position's duties.

The AAO has long recognized the Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Counsel maintains that the petitioner is proffering a medical and health services manager position as described in the *Handbook*, and counsel correctly notes that the *Handbook* states, in part, that "[a] master's degree is the standard credential for most positions, although a bachelor's degree is adequate for some entry-level positions in smaller facilities." Counsel likewise asserts that the proffered position fits within the Medical and Health Services Manager occupation as described in DOL's *Dictionary of Occupational Titles (DOT)*. Counsel also maintains that the proffered position belongs to the Coordinator of Rehabilitation Services occupation as it is described in DOL's *O*NET*. The evidence of record, however, does not support these propositions.

Line by line comparison of the proposed duties, as described above, with those presented in the counsel's referenced sections of the *DOT* and the *O*NET* reveals that the duties described for the Medical and Health Services Manager occupation in the *DOT* and for the Coordinator of Rehabilitation Services in the *O*NET* substantially and materially exceed the duties described in the record for the proffered position.

Also, the evidence of record does not establish that the proffered position comports with any occupation for which the *Handbook* indicates a requirement for at least a bachelor's degree in a specific specialty. Contrary to counsel's view, the evidence of record about the proffered position does not substantially comport with the *Handbook's* information about the Medical and Health Services Manager occupation, which conveys that this occupation requires a level of knowledge and application of health services management practices and principles that is not an evident requirement of the proffered position. In this regard, major portions of the proposed duties are described in general terms that indicate a subordinate role to the director of operations without outlining any specific management tasks for which the beneficiary would be responsible. See the duty descriptions "Assists the operations director in coordinating ongoing provision of rehabilitative services, (20%)" and "She will formulate treatment plans, functional outcomes or goals and service delivery for referred clients in consultation with the director of operations. (10%)." Likewise, the record does not illuminate the tasks and requisite knowledge that would be involved when the beneficiary would be spending 4% of her time "administering fiscal operations." There is no apparent requirement for a baccalaureate level of highly specialized knowledge in order to exercise these or the remaining proposed duties, which include scheduling or facilitating interdisciplinary team case conferences, participation in physician's meetings "to report or resolve medical issues for caseload"; monitoring and reporting hours of service; communication

with families, payers, and physicians about patients' progress; monitoring the satisfaction with the petitioner's services; or writing "accurate, complete, and clear documentation."

The opinion rendered by the Chair of the Department of [REDACTED] is not persuasive. In most pertinent part, this professor opined that the "the position of Rehabilitation Coordinator as offered to [the beneficiary] by [the petitioner] is comparable to industry standards for individuals who administer outpatient rehabilitation clinics and services," and "that such a position typically would require a minimum of a bachelor's degree in a rehabilitation area, most typically that of occupational therapy, physical therapy or speech [and] language pathology." The professor's letter does not discuss the particular duties described by the petitioner. To the contrary, the professor's letter's main focus is on a typical rehabilitation coordinator position, and not on the limited, particular duties that the petitioner has described. This approach does not establish that the duties of the proffered position comport with or require the same educational credentials as the generic position upon which the professor expounds. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

It is appropriate to note that the AAO does not join counsel in according significant evidentiary weight to the education/training requirement information provided in the *DOT* and the *O*NET*. Both sources provide only limited information about general levels of education and training usually associated with a specific occupation. Neither the *DOT* nor the *O*NET* analyze an occupation in terms of the specialty occupation qualifying criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). For instance, an SVP rating assigned by the *DOT* 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, and it does not specify the particular type of degree, if any, that a position would require. Likewise, a Job Zone 4 *O*NET* rating only means that the DOL has placed a particular occupation among a group of occupations of which most, but not all, require a bachelor's degree. The rating does not signify that the occupation requires at least a bachelor's degree in a specific specialty.

As reflected above, as described in the record the proposed duties do not establish that the proffered position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty. Accordingly, the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the petitioner evidence of record has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): the evidence does not establish that a degree requirement is common to the industry in positions parallel to the proffered one among organizations similar to the petitioner.

Factors often considered by CIS when determining the industry standard 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." *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)).

As indicated earlier in this decision, the evidence of record does not substantiate that the proffered position is one for which the *Handbook* reports a degree requirement. Also, there are no letters or affidavits from firms or individuals in the industry.

The Internet job vacancy advertisements have no evidentiary significance. They are too few to establish an industry-wide hiring requirement. Also, the limited information presented in the record about the proposed duties is insufficient to establish that they are substantially the same as those involved in the advertised positions.

The AAO also found that the evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that is, as one that is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. The record's limited descriptions of the proposed duties do not establish such complexity or uniqueness.

Next, the past-hiring-practice criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not a factor. The petitioner presented no evidence relevant to its hiring history with regard to rehabilitative services coordinator positions.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The AAO is not persuaded by counsel's contention that the requisite specialization and complexity are inherent in the number of bachelor-degreed physical therapists and occupational therapists that fall within the supervision of the rehabilitation services coordinator. Likewise, the AAO discounts counsel's undocumented statement that "in line with long-standing case law a person employed in an executive or managerial position supervising employees who are working in specialty occupations are generally also considered members of a specialty occupation." The specific duties as presented in the record are decisive, not an abstract categorization as executive or managerial that counsel may attribute to a position. Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The evidence of record about the proposed duties does not establish that they are as specialized and unique as counsel asserts.

Finally, counsel's assertion that "the [the \$30 dollar per hour] offered wage is also representative of the specialized and complex knowledge required to perform the duties as usually associated with the attaining of a baccalaureate or higher degree" is not persuasive. The other evidence of record does not demonstrate a requirement for knowledge so specialized and complex as to be usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, and the AAO will not extrapolate such a requirement from the proffered wage.

As the evidence of record does not satisfy any specialty occupation criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision 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 not sustained that burden. Accordingly, the appeal will be dismissed.

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