

**PUBLIC COPY**

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

D2



FILE: WAC 02 173 53767 Office: CALIFORNIA SERVICE CENTER Date: JUN 2 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:

SELF-REPRESENTED

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 professional staffing company. It seeks to employ the beneficiary as a medical and health services manager, 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 petitioner failed to provide a valid employment contract indicating that the beneficiary would be employed in a specialty occupation upon arrival in the United States. On appeal, counsel submits a brief and additional information.

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 Immigration and Nationality Act (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 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.

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 staffing agency seeking the beneficiary’s services as a medical and health service manager. 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: develop, implement, and maintain policies and procedures for documenting, storing, and retrieving medical information, and for processing medical/legal documents, insurance data, and correspondence requests; and analyze patient data for reimbursement, quality of patient care, risk management, utilization review and research. The petitioner requires a minimum of a bachelor’s degree in a medical, dental, or other healthcare related field for entry into the offered position.

The director denied the petition because the proffered position is not a specialty occupation, and because the petitioner failed to provide a valid employment contract indicating that the beneficiary would be employed in a specialty occupation upon arrival in the United States. On appeal, counsel submits a brief and additional information stating that the proffered position qualifies as 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 a 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 develop policies and procedures for documenting, storing, and retrieving medical information. It is not possible to determine from the description provided whether the beneficiary would manage a medical records department, or simply act as a clerk, technician, or medical records supervisor. The beneficiary would also analyze patient data for reimbursement, quality of care, and risk management.

These duties also appear to be clerical in nature, or involve a quality assurance review by non-professional staff.

The *Handbook* indicates that medical records and health information technicians entering the field usually have an associate degree from a community or junior college. Thus, the petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). The petitioner offers no evidence to establish that a degree requirement is common to the industry in parallel positions among similar organizations, and does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) in this regard. 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). 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. Finally, the duties described appear to be routine in the industry and do not establish that the position is so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that they are 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, therefore, failed to establish that the proffered position is a specialty occupation and the AAO shall not disturb the director's denial of the petition.

The director also called into question the petitioner's client contract for the beneficiary's services. This issue will not be discussed as the petition has been denied on another ground.

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.