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FILE: WAC 02 133 54623 Office: CALIFORNIA SERVICE CENTER Date: JUN 9 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 medical clinic specializing in complex spinal surgery. It seeks to employ the beneficiary as a bilingual medical assistant. The petitioner, therefore, 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 appeared to be a medical records and health information technician, and, as such, does not appear to be a specialty occupation. On appeal, counsel asserts that the position is a medical assistant position that is a specialty occupation.

Section 214(i)(1) of [REDACTED] 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 petitioner's letter of support dated [REDACTED]; (3) the director's request for additional evidence; (4) the petitioner's letter that responds to the director's request; (5) the director's denial letter; and (6) 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 medical assistant. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letters in support of the petition and in response to the director's request for further evidence. According to the initial petition, the beneficiary would interact with the staff and physicians, as well as with the Persian-speaking patients. In addition, the beneficiary would be filling out forms and taking medical information from patients.

In the petitioner's response to the director's request for further evidence, the petitioner provided the following breakdown of the time that the beneficiary would spend in his work duties: 40 per cent of his time would be spent taking the patient's medical history; 40 per cent of his time would be spent taking phone calls and filing; and an additional 20 per cent of his time would be spent presenting the patient's history to the physician. The petitioner did not indicate that the position required a baccalaureate degree in a specific specialty; however it indicated that the position required extensive background in medicine and the ability to speak Persian fluently.

The director found that the proffered position was not a specialty occupation and stated that the duties of the position appear to be that of a medical records and health information technician. The director referred to the training requirements for this classification as described in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that the position is not a medical records technician and refers to the *Handbook* classification of medical assistants. With regard to training for this classification, the petitioner states that the *Handbook* indicates job prospects are best for medical assistants with formal training or experience.

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."

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to the proffered position, the petitioner correctly identified it as a medical assistant. With regard to training for such a position, the 2004-2005 edition of the *Handbook* states the following: "Most employers prefer graduates of formal programs in medical assisting. Such programs are offered in vocational-technical high schools, postsecondary vocational schools, and community and junior colleges. Postsecondary programs usually last either 1 year, resulting in a certificate or diploma, or 2 years,

resulting in an associate degree.” The *Handbook* further states: “Formal training in medical assisting, while generally preferred, is not always required. Some medical assistants are trained on the job, although this practice is less common than in the past. Applicants usually need a high school diploma or the equivalent.” Thus, for the majority of duties described by the petitioner, neither the *Handbook* nor the petitioner has established that a baccalaureate degree in a specific specialty is required for entry into the proffered position. The record also does not establish that any of the beneficiary’s duties involving translation from Farsi to English or vice versa would require a baccalaureate degree in a specific specialty for entry into the position.

With regard to parallel positions in similar healthcare settings, the petitioner submitted no further documentation on bilingual medical assistants employed in similar medical clinics. The record also does not include any evidence from professional associations regarding an industry standard, or documentation 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 stated in its letter of support that the position was a new one. Therefore the petitioner cannot meet this criterion.

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 of the position appear routine. As described by the petitioner, 20 per cent of the beneficiary’s time will be spent answering telephones and filing. The remaining 80 per cent involve interactions with physicians and patients either doing medical histories or going over the medical histories with physicians. While the petitioner may view the job requirement for a bilingual medical assistant as necessary, this assertion alone would not be sufficient to establish the nature of the job duties as either specialized or complex. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.