



U.S. Citizenship  
and Immigration  
Services



JUN 18 2004

FILE: WAC 02 205 54642 Office: CALIFORNIA SERVICE CENTER Date:

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.

A handwritten signature in cursive script, appearing to read "Mari Johnson".

for 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 health care facility for the developmentally and physically disabled. It seeks to employ the beneficiary as an information and referrals coordinator, 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 and additional information 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 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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an information and referrals coordinator. Evidence of the beneficiary’s duties was included with the I-129 petition, and in response to the director’s request for evidence. According to this evidence the beneficiary would: develop and implement information intake and resource referral strategies for potential and current patients/clients and their families to determine suitability and legitimacy of admission and proper referral to specialized services; assist patients and families in identifying patients’ needs and conditions, including mental status, functional capability, medical history, family and community resources, and finances; interpret and communicate needs, programs, and services to patients, families, medical staff, and care facility staff; develop and present care facility orientations and information briefings for patients and families; coordinate and facilitate patient admission, transfer, and discharge to specified residential health care facilities; recommend client referrals to other services and community facilities; monitor and assess utilization of facility services and provide for the review of admissions, duration of stay, and professional services to be rendered by the health care facility; ensure that care and treatment strategies serve the purposes of quality assurance, cost containment, and optimum utilization of facility resources and services; maintain close liaison with federal, state, and county departments, community sources, and other health care agencies to exchange and update information on services and resources available to meet client needs; gather and disseminate information about new health care regulations, programs, facilities and resources; write proposals to obtain funding from private organizations or government agencies; participate in area activities related to managed health care as a representative of the care facility; develop and maintain a tracking database for patient information and services rendered to be used for individual program evaluation and documentation; collect aggregate data on a quarterly and year-end basis to allow assessment and evaluation of the effectiveness of implemented health and residential care programs, and determine areas where intervention and/or education may be appropriate; maintain effective reporting systems; evaluate data and statistics; in coordination with other staff, review facility’s internal policies and procedures regarding admission, treatment, emergencies, staff responsibilities, criteria for continued confinement, exit/release requirements, and maintenance of services; confer with facility management, including medical and other professional staff, regarding streamlining admission requirements and procedures, and improving treatment procedures and priorities; and determine continuance

of health care/treatment. The petitioner requires a minimum of a bachelor's degree in social work, nursing, psychology or a related field for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. 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 petitioner takes issue with the director's finding that the proffered position is essentially that of a medical records and health information technician, and states that the position is akin to a social/human service position. The AAO agrees with the petitioner. The petitioner has determined that the minimum requirement for entry into the proffered position is a bachelor's degree in social work, nursing, psychology or a related field. As noted above, however, the requirement of a degree for a specialty occupation does not mean just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. In this instance, a degree in a specific specialty is not required for entry into the proffered position. An individual may qualify to perform the duties of the position offered with a degree in nursing, or social work/psychology or a related field. A nursing degree is not closely related to the fields of social work or psychology. Thus, a degree in unrelated disciplines will qualify an individual to perform the duties of the offered position. The petitioner has not, therefore, established that a baccalaureate or higher degree in a specific specialty is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has also failed to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion, the petitioner submitted two job advertisements. First, two advertisements are insufficient in scope to establish an industry standard. Second, both advertisements submitted are for positions with university departments/centers, not organizations similar to the petitioner. Finally, while one advertisement requires a degree in the social sciences for its information referral specialist, the other requires a degree in unrelated disciplines, nursing or the social sciences. It has not been shown that the industry commonly requires a degree in a specific specialty for entry into the proffered position.

The petitioner does not assert that it normally requires a degree for entry into the proffered position as the position offered is a new position in the petitioner's organization. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the proffered position's duties 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 they are normally 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 duties appear to be routine for information and referral coordinators in the healthcare industry .

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.