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U.S. Citizenship
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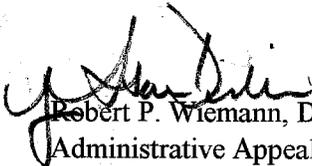
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion to reconsider will be granted, but the director's decision to deny the petition will be affirmed.

The petitioner is a medical services provider that seeks to employ the beneficiary as medical coordinator. The petitioner 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 is not a specialty occupation. The AAO affirmed the director's findings. On motion, counsel asserts that the AAO erroneously upheld the director's finding, and in support, counsel submits a copy of an approved H1B petition and extension filed by the same petitioner for the same position as the proffered position. Counsel also states that in its dismissal of the appeal, the AAO erroneously compared the instant position to that of a medical assistant. The matter will be reconsidered in light of these new arguments.

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.

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 director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) the petitioner's appeal; (6) the AAO's decision affirming the denial of the petition; and (7) the petitioner's motion. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a medical coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's response to the director's request for evidence; and the appeal of the denial of the petition. According to this evidence, the beneficiary would perform duties that entail reading, analyzing and interpreting into Arabic medical reports, lab results, diagnoses, and special requests from doctors to patients prior to and after medical procedures, and explaining this medical information in Arabic to patients. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in a pre-medical field as well as two years of related experience.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director compared the instant position to that of a health services manager. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position of health services manager was not necessarily a baccalaureate degree or its equivalent in a specific specialty.

On appeal, counsel stated that the director erred in his interpretation of information found in the *Handbook* regarding the health services manager position. Counsel, however, pointed out that the position was more aptly compared with that of a transplant coordinator, as described in the Department of Labor's *Dictionary of Occupational Titles (DOT)*. Counsel also noted that the *DOT* assigned the position an SVP rating of 7, which according to counsel, requires a degree to enter into the position.

In dismissing the appeal, the AAO noted that the *DOT* is not an authoritative source on whether a given occupation qualifies as a specialty occupation. In fact, an SVP rating does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating 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, nor does it specify the particular type of degree, if any, that a position would require. The AAO also compared the offered position to that of a medical assistant, which, according to the *Handbook*, does not call for a degree in a specific specialty as an entry requirement. The AAO agreed that the petitioner had not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A); thus, it affirmed the director's denial.

On motion, counsel states that it is incorrect to compare the offered position to that of a medical assistant or a health services coordinator, and that the most correct comparison available is to that of a transplant coordinator, as discussed in the *DOT*. Counsel refers the AAO to the "original petition and petitioner's letter," and to the petitioner's response to the director's request for evidence. On motion, counsel submits copies of approvals for an H1B petition and an extension submitted by the same petitioner and the same job title, suggesting that the instant petition should have been likewise approved.

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.

Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS approved another, similar petition in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the position offered in the prior case was similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior cases was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

It is noted that several different job titles have been proposed by CIS and by the petitioner for the proffered position. The difficulty in defining the instant position results from the vagueness of the description of its duties as provided by the petitioner. Counsel refers the AAO to the original petition and the petitioner's letter; however, these documents contain no description of the job other than to state that the beneficiary would plan and coordinate medical treatments for Arabic-speaking patients. From this information it is not possible to ascertain the exact nature of the duties.

Turning to the information provided in the petitioner's response to the director's request for evidence, the petitioner indicated that the beneficiary would function as a "link" and an "intermediary" and would plan and coordinate services. The petitioner provided no other specific information regarding this aspect of the job; thus, it is unknown what services the beneficiary would coordinate or how he would go about doing so. The petitioner wrote that the beneficiary would spend, per week, about fifteen hours reading and analyzing, and interpreting medical reports, lab results, diagnoses, and special requests from doctors into Arabic for the benefit of Arabic-speaking patients; about fifteen hours explaining to patients in Arabic information from doctors, medical reports, lab results, and diagnoses; and about fifteen hours explaining, in Arabic, medical procedures to surgical patients. The petitioner did not explain what exact type of analysis of records the beneficiary would conduct, other than for the purposes of being able to interpret such information for patients. In sum, it appears that the beneficiary would spend the entire week interpreting medical information to patients in Arabic. The instant position appears to be, essentially, that of an interpreter specializing in medical cases.

On motion, counsel likens the instant position to that of a transplant coordinator. A reading of the full text of the *DOT's* description of that position, however, reveals that the objective of the transplant coordinator is quite different from that of the proffered position. Transplant coordinators solicit and procure organs and arrange for their retrieval, match donors to recipients, schedule tests and obtain necessary consent for transplants, and participate in patient follow-up care. The proffered position may contain the same elements of communication involved, such as speaking with doctors and patients, but its scope and purpose is not

comparable to that of the transplant coordinator. As previously pointed out, there is insufficient detail regarding any coordination or analysis to be performed by the beneficiary, other than that required for interpretation.

Regarding the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position, as asserted by counsel on motion, the AAO finds the evidence lacking. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for entry into an interpreter or translator job.

Counsel indicates that 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, as required by 8 C.F.R. § 214.2(h)(iii)(A)(4). Although it is clear that the beneficiary would need to be familiar with medical terminology, there is no documentation to the effect that a bachelor's degree in a medical or scientific field would be required for this purpose. A nurse, for example, would be familiar enough with such terminology to handle the interpreting duties, and no bachelor's degree is required to become a nurse. Indeed, a medical assistant, as pointed out previously by the AAO, could also have the necessary exposure to medical terminology in order to be able to explain reports and procedures to patients. Finally, an interpreter with no medical studies at all is capable of self-education to the required level, for, as pointed out by the *Handbook*, on-the-job training is the most common method of preparation for interpreters.

The record also mentions other duties, such as counseling patients to reduce their anxiety; however, there is no indication that the beneficiary is intended to serve as a counselor, social worker, medical practitioner, or any other function requiring independent medical or treatment skills. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 denial of the petition is affirmed.