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**U.S. Citizenship
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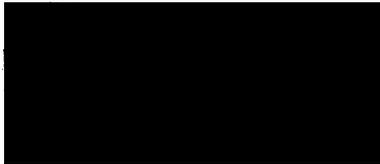


FILE: EAC 02 061 51696 Office: VERMONT SERVICE CENTER Date: **MAR 08 2004**

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

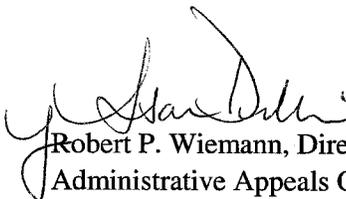
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



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 rehabilitation facility that seeks to employ the beneficiary as a clinic administrator. 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. On appeal, counsel submits a brief.

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; and (5) 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 clinic administrator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 29, 2001 letter in support of the petition; and the

petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: planning and developing health/rehabilitation information systems; analyzing medical documents and devising record-keeping methods; coordinating care/rehabilitation evaluations and treatment with practicing physician; reviewing and promoting in-service educational materials and instructional programs for clinical treatment and follow-up visits; analyzing patient data for reimbursement, clinic treatment, and patient care; liaising with insurance groups on billing and payment plans; reviewing clinic services with practicing physicians and medical support staff; preparing educational and informational materials; and record keeping. Although not explicitly stated, it appears that the petitioner requires a doctor of medicine degree or its equivalent for the proffered position.

The director found that the proffered position was not a specialty occupation because the proposed duties, which include handling insurance, billing, and computer records, are not so complex that a baccalaureate degree is required. 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, counsel states that the petitioner has satisfied three criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that the proffered position is so complex that only a person with a baccalaureate or higher degree can perform the job duties, that the petitioner normally requires a degree, and that the degree requirement is common to the industry in parallel positions among similar organizations. Accordingly, the AAO will address these three criteria only.

The AAO turns first to the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) - 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. Counsel asserts that the proffered position meets this criterion because the proffered position is that of a medical and health service manager, a position that has been determined by the Department of Labor (DOL) in its *Occupational Outlook Handbook (Handbook)* to be a specialty occupation. The AAO does not agree with counsel's assertion that the beneficiary is a health services manager, an occupation that would normally require a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration, or a bachelor's degree for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations. In this case, the beneficiary does not hold a degree in any of these specialties nor does the position require such a degree. Rather, she holds a foreign degree that has been determined to be the equivalent of a doctor of medicine degree from a regionally accredited university in the United States.

The record also contains an evaluation from the International Education Council, a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a Bachelor of Science degree in preventive medicine with a minor in administrative services management from an accredited U.S. college or university. However, the evaluation is based upon the beneficiary's education, training and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The proffered position is primarily that of a medical assistant. The DOL's *Handbook*, 2002-2003 edition, at page 314, describes medical assistant positions, in part, as follows:

Medical assistants perform routine administrative and clinical tasks to keep the offices of physicians, podiatrists, chiropractors, and optometrists running smoothly. . . .

In small practices, medical assistants usually are “generalists,” handling both administrative and clinical duties and reporting directly to an office manager, physician, or other health practitioner. . . .

A review of the DOL's *Handbook* at page 315 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a medical assistant. Most employers prefer graduates of formal programs in medical assisting, which are offered in vocational-technical high schools, postsecondary vocational schools, community and junior colleges, and in colleges and universities. Accordingly, the petitioner has not established that the position is a specialty occupation based upon the complexity or uniqueness of its duties.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for various positions. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. For example, one of the positions is that of a healthcare supply chain manager whose duties include controlling the technical, business, and personnel aspects of consulting projects and assisting in leading sales efforts within client engagements. Another position is that of a medical coding manager to join the management team of a large oncology practice in a major academic health center. The petitioner also has not demonstrated that the proposed duties of the proffered position are as complex as those listed in the advertised positions. Thus, the advertisements have little relevance.

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 criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. Counsel asserts that the petitioner previously filed an H-1B petition on behalf of another individual who currently works in the position of office coordinator. Although counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved another, similar petition in the past, this record of proceeding does not 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 other H-1B petition was parallel to the proffered position.

Furthermore, CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation, regardless of the petitioner's past hiring practices. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ In this regard, the petitioner

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

fails to establish that the clinic administrator position it is offering to the beneficiary entails the theoretical and practical application of a body of highly specialized knowledge.

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 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 appeal is dismissed. The petition is denied.