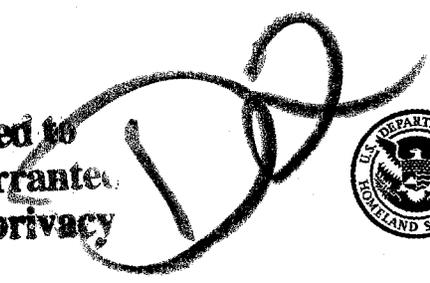


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: WAC 02 283 53489 Office: CALIFORNIA SERVICE CENTER Date: **MAR 15 2004**

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

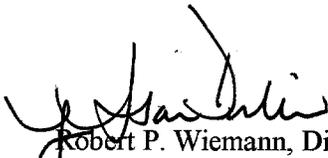
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 director of the service center 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 home health agency that seeks to employ the beneficiary as a medical researcher. 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 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. § 14.2(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 medical researcher. Evidence of the beneficiary's duties includes: the Form I-129; the letter accompanying the Form I-129; and the petitioner's response to the

director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: reviewing medical journals for health issues and developments; eliciting detailed patient histories; discussing patients' charts and files with physicians and medical staff; utilizing medical journals, textbooks, and medical research materials to analyze and evaluate patients' conditions; and researching medical literature to suggest modes of treatment for possible diagnoses. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in the medical field.

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). Moreover, the director found the job description vague, and the duties dissimilar from those of a biological or medical scientist. The director noted that, in examining whether a position is a specialty occupation, the actual duties to be performed are determinative, not the job title.

On appeal, counsel contends that the petitioner has satisfied more than one of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). First, counsel asserts that a health care operation would normally hire a medical researcher possessing a minimum of a bachelor's degree. Counsel claims that the petitioner's submitted Internet printouts support this assertion. Next, counsel cites the 2002-2003 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), under the classification of biological and medical scientists, to state that although the educational background of medical researchers vary, many medical researchers possess a master's or higher degree. According to counsel, such degrees are required in the industry given that a medical researcher requires skills obtained through significant training and experience. Third, counsel implies that the petitioner has not hired any person possessing less than a bachelor's degree for the proffered position. Fourth, counsel states that the nature of the duties is usually associated with the attainment of a bachelor's or higher degree because the position requires knowledge of bio-medical terminology and analysis and evaluation of research. Counsel cites the Department of Labor's Occupational Employment Statistics survey and cases to substantiate this statement.

Upon review of the record, the proffered position is not a specialty occupation as outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO finds that the petitioner failed to establish the first criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A); namely, that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. As described by the petitioner, the duties of the proffered position do not resemble those performed by medical researchers. Counsel references the position of a medical scientist in the *Handbook*. The *Handbook* reveals that medical scientists often work in applied research or product development or in managerial or administrative positions. About one in eight medical scientists are employed by the government; with most of the remainder found in research and testing laboratories, educational institutions, the drug industry, and hospitals. Thus, a medical scientist would not be found in a home health agency - the petitioner's business.

The petitioner's submitted Internet postings do not support counsel's assertion that a health care operation would normally hire a medical researcher. For example, the beneficiary's duties differ dramatically from the postings

for a medical writer and the clinical education specialist, and the Metropolitan Urological Associates posting requires a medical degree, not a bachelor's degree.

To establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree - counsel asserts that a bachelor's degree is required in the industry because a medical researcher often requires skills that can only be obtained by significant training and experience. However, counsel's assertion is not supported by independent evidence; thus, it does not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

With respect to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), counsel asserts that the employer normally requires a bachelor's degree in a medical field. Nevertheless, the petitioner has never made this assertion; consequently, counsel's unsubstantiated assertion does not constitute evidence. *Matter of Obaigbena*, *id.*; *Matter of Ramirez-Sanchez*, *id.*

Counsel's statement that the nature of the beneficiary's duties is usually associated with the attainment of at least a bachelor's degree, and counsel's reference to the Occupational Employment Statistics survey and allegedly approved cases to substantiate this statement are without substance. In the first place, the Occupational Employment Statistics survey's description of a medical scientist is vague; whereas the *Handbook's* description of a medical scientist is comprehensive and in-depth. As already discussed, the duties of the proffered position are not similar to those of a medical researcher. With respect to counsel's cited cases, the record of this proceeding does not contain all of the supporting evidence submitted to the service centers in the prior cases. In the absence of all of the corroborating evidence contained in the record of proceeding in those cases, counsel's citations to petitions are not sufficient to enable the AAO to determine whether those petitions were parallel to the proffered petition. Moreover, 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). Thus, the petitioner fails to establish the fourth criterion at 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.