

**PUBLIC COPY**

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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



**U.S. Citizenship  
and Immigration  
Services**



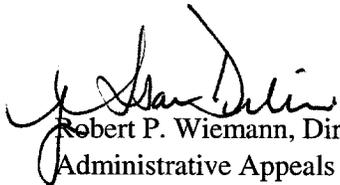
FILE: EAC 02 265 53071 Office: VERMONT SERVICE CENTER Date: **MAR 15 2004**

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:  
[Redacted]

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 dental office that seeks to employ the beneficiary as a medical records administrator. 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 and because the beneficiary was not qualified to perform the duties of the position of medical records administrator. On appeal, counsel states that a baccalaureate degree is sufficient for entry-level positions as medical records administrator. Counsel also submits additional documentation.

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 September 5, 2002 letter that responds 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 records administrator. Evidence of the

beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letter in response to the director's request for further evidence. According to the initial petition, the beneficiary would perform duties that entail: planning, developing and administering a health care facility and the requirements for a health care system; producing and applying procedures and policies for documenting and saving data; getting information and processing medical legal documents and insurance data; and supervising staff in their preparation and analysis of medical documents. In the petitioner's response to the director's request for further evidence, the petitioner indicated that the beneficiary would perform medical research, coordinate medical care evaluations with medical staff, and develop criteria and methods for such evaluation, and for the quality of patient care. In addition the beneficiary would develop and administer the health information systems for the facility, and for the processing of medical and legal documents.

The director found that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). In particular, the director determined that the petitioner had not established that it was commonplace for businesses similar to the petitioner, namely dental offices, to employ medical records administrators or health services managers. The director also noted that the petitioner had provided no documentary evidence to establish that the AAO decisions cited by the petitioner in its response to the director's request for further evidence were analogous to the instant petition.

On appeal, counsel submits an excerpt on medical record administrator/health services manager jobs taken from the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The petitioner also submits information from the DOL O\*NET *Dictionary of Occupational Titles (DOT)*. Counsel states that, according to the *Handbook*, a bachelor's degree is adequate for some entry-level positions in smaller facilities or for jobs at a departmental level within health care organizations. Counsel further asserts that if the petitioner were considered a small facility or a dental department, it could hire a medical record administrator with only a bachelor's degree to perform the proffered position. .

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." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to the instant petition, CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). Any facts that come into being subsequent to the filing of a petition cannot be considered when determining whether the proffered position is a specialty occupation. *See Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

A review of the record reveals that the petitioner substantively changed the job duties for the proffered position in its response to the director's request for further evidence. The initial job description primarily mentions duties involved with the processing and maintenance of medical records. The second job description for the proffered position includes the performance of medical research, the coordination of medical care evaluations with the medical staff, and involvement in the monitoring of patient care. These latter duties are distinct from the original duties.

The director requested additional evidence because there was insufficient evidence that the proffered position was a specialty occupation. In response, the petitioner assigned new job responsibilities that had previously not been submitted for the record. However, the purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a position to the beneficiary with significantly changed duties, or establish a new level of authority for the proffered position within the organizational hierarchy. The petitioner must establish that the position that was offered to the beneficiary at the time the petition was filed merits classification as a specialty occupation. *Matter of Michelin Tire, supra*. If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. For purposes of this proceeding, the AAO analysis of the I-129 petition will be based on the original job duties described in the I-129 petition.

Although the petitioner identifies the position as a medical record administrator/health services manager and describes the duties, in part, as planning a health care system, the *Handbook's* health services manager classification does not appear analogous to the proffered position. For example, although counsel asserts that the petitioner is a smaller facility that could employ a health services manager, on page 75, the *Handbook* identifies smaller facilities that could employ medical record administrators or health services managers as nursing homes or small medical groups of ten to fifteen physicians. Without more persuasive evidence, the petitioner's business operations do not appear to equate to the types of facilities identified in the *Handbook*. Thus, the petitioner has not established that it would require a medical and health services manager with a baccalaureate degree in a specific specialty for the proffered position. Another related position that appears more analogous to the proffered position is medical records technician, which does not require a baccalaureate degree in a specific specialty for entry into the position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted no further documentation for academic credentials required of other medical records administrators in similar facilities. Although counsel asserts on appeal that some small facilities could require only a bachelor's degree along with a health profession background plus experience in a related field for their medical record administrators, counsel offers no documentary evidence to further substantiate this assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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. While the petition indicates that the petitioner has seven employees, neither counsel nor the petitioner provided any further documentation on previous or current medical record administrator hires. Thus, the petitioner has not established 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. Nevertheless, to the extent that they are depicted in the record, the duties that primarily involve the preparation of medical records and their maintenance, 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. 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.

Beyond the decision of the director, the beneficiary does not appear qualified to perform the duties of the proffered position. According to the petitioner, the beneficiary has a U.S. degree in biology with six months of experience working in a dental office in Pakistan. The beneficiary's baccalaureate degree is not in a specific specialty that is related to the proffered position, if it were to have been found to be a specialty occupation. In addition, the length of the beneficiary's work experience would not satisfy the regulatory requirements for establishing the equivalency of relevant work experience for actual academic credentials. However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary's qualifications further.

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.