



U.S. Citizenship
and Immigration
Services

Da

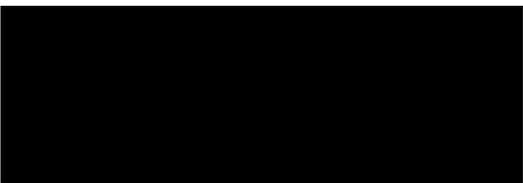


FILE: WAC 03 196 50052 Office: CALIFORNIA SERVICE CENTER Date: OCT 25 2004

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

identifying data deleted to
prevent [Redacted]

DATE: 10/25/04

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 provider that seeks to employ the beneficiary as a medical/technical writer. 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 and additional evidence.

Section 214(i)(1) of 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 medical/technical writer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail assisting in informing the petitioner about governmental regulations; preparing documentation for permits and applications; writing and editing procedural manuals, standard operating procedures, and technical and administrative bulletins, reports, and memorandums in conformity with regulatory requirements about patients' privacy; assessing the needs of prospective and existing patients and their families; developing written evaluations about the medical and mental status of prospective patients; designing an individualized personal service plan for each patient after conferring with staff health professionals and others; documenting daily notes for each patient and quarterly progress reports for consulting psychologists and physicians; developing materials for training and reference purposes; and providing information about medical and non-medical staff. The petitioner's June 10, 2003 letter stated that a candidate for the proffered position must have completed a four-year college program, especially in the field of medicine and nursing.

In response to the request for evidence, counsel stated that the beneficiary will assist in developing patients' plans and pre-admission evaluations; reviewing and evaluating patient care plans to determine their appropriateness following patient observations; preparing reports and instructions for support staff about health care for patients and newsletters for families; and coordinating health care providers and inspecting the facility to ensure regulatory compliance.

The director determined that the evidentiary record did not establish that the proffered position was not a specialty occupation. The director could not conclude that a bona fide position existed which could be considered a specialty occupation or that the beneficiary would primarily perform duties of a specialty occupation. According to the director, the petitioner's duties were performed by office and administrative support worker supervisors and managers and marketing and public relations managers, and that managerial positions are not generally considered specialty occupations.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel contends that the petitioner's organization has a unique and specific need for the services of a medical-technical writer because of the complexity of its operation and home care program, and its need to comply with governmental regulations. Counsel submits additional evidence, claiming that the beneficiary will review, edit, and write about the petitioner's health information system. Counsel emphasizes that the beneficiary will keep the petitioner informed about new regulations and must be well-versed in medical terminology. Counsel disagrees that the proffered position would be performed by office and administrative support worker supervisors and managers and marketing and public relations managers. Counsel states that the Department of Labor's *Dictionary of Occupational Titles (DOT)* and the *Occupational Outlook Handbook (the Handbook)* reveal that a medical-technical writer requires a bachelor's degree. Finally, counsel maintains that the beneficiary's educational qualifications would greatly benefit the petitioning entity.

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 first considers 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)).

In determining whether a position qualifies as a specialty occupation, 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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel states that a medical-technical writer is a specialty occupation. However, the *Handbook* discloses that the duties of the proffered position are not performed by a technical writer. According to the *Handbook*,

Technical writers put technical information into easily understandable language. They prepare operating and maintenance manuals, catalogs, parts lists, assembly instructions, sales promotion materials, and project proposals.

The *Handbook* continues:

Science and medical writers prepare a range of formal documents presenting detailed information on the physical or medical sciences. They convey research findings for scientific or medical professions and organize information for advertising or public-relations needs. Many writers work with researchers on technical subjects to prepare written interpretations of data and other information for a general readership.

The evidentiary record does not demonstrate that the beneficiary will "put technical information into easily understandable language"; prepare "formal documents presenting detailed information on the physical or medical sciences"; "convey research findings for scientific or medical professions and organize information for advertising or public-relations needs" or prepare "written interpretations of data and other information for a general readership." The petitioner described the beneficiary as preparing documents for permits and regulatory applications; assessing the needs of prospective and existing patients and their families; developing written evaluations of the medical and mental status of prospective patients; designing an individualized

personal service plan for each patient; and documenting daily notes for each patient and preparing quarterly progress reports for consulting psychologists and physicians. None of these duties are performed by a technical or medical writer.

The petitioner claimed that the beneficiary will be writing and editing manuals and technical reports for governmental audits; developing materials for training and reference; and writing and editing procedural manuals, standard operating procedures, and technical and administrative bulletins and memorandums in conformity with regulatory requirements about patients' privacy. But the submitted evidence on appeal "Annex A-F" does not establish that the beneficiary will occupy a medical-technical writer position. Annex A, the standard Form HCFA-485 entitled "Home Health Certification and Plan of Care," is completed by a physician and provider; Annex B and C seem to be standard forms; Annex D is from the OASIS Implementation Manual, a document that does not seem to have been authored by the petitioner; Annex E, entitled "OBQI Outcome Report Interpretation," also does not seem to have been authored by the petitioner; and Annex F was prepared by the Center for Health Services Research at the University of Colorado Health Sciences Center. None of the documents were prepared by the petitioning entity. In referring to the Annex A-F documents, counsel claims that the petitioner:

[I]s submitting herewith additional documentation, copies[,] or samples of their company's health information systems which the beneficiary will review, edit, and write in furtherance of his duties as [m]edical-[t]echnical [w]riter.

Given the nature of the documents described in Annex A-F, the AAO cannot conclude that the beneficiary will "review, edit, and write in furtherance of" these documents at the level of a medical-technical writer. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

In light of the petitioner's response to the request for evidence, at least 50 percent of the beneficiary's duties seem to be performed by a registered nurse (RN). According to the *Handbook*, when providing direct patient care, RNs observe, assess, and record symptoms, reactions, and progress in patients. They also develop and manage nursing care plans, instruct patients and their families in proper care, and help individuals and groups take steps to improve or maintain their health. The *Handbook* reports that employers do not require a baccalaureate degree for an RN position.

There is no evidence in the record that would establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Given the nature of the Annex A-F documents, the AAO cannot conclude that the beneficiary will "review, edit, and write in furtherance of" these documents at the level of a medical-technical writer. In addition, at least 50 percent of the beneficiary's duties are performed by an RN, a position that does not require a bachelor's degree. Accordingly, the petitioner cannot establish

that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

This is a newly created position. Consequently, the petitioner cannot establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Again, the duties of the proffered position are not performed by a medical-technical writer. At least 50 percent of the duties are performed by a RN, a position that does not require a baccalaureate degree.

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.