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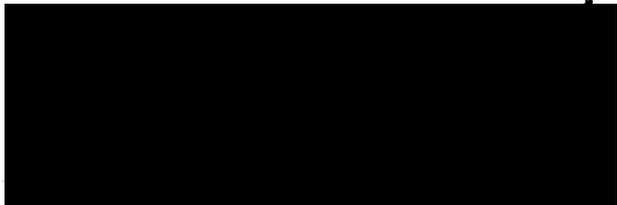
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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

D2



FILE: WAC 02 211 50393 Office: CALIFORNIA SERVICE CENTER Date: **SEP 01 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.

Marj Johnson

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 home healthcare agency, and seeks to employ the beneficiary as a medical writer/researcher. 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 on the basis that the proffered position was not a specialty occupation. On appeal, counsel submits a brief and additional information.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a medical writer/researcher. Evidence of the beneficiary's duties includes the I-129 petition with attachment, and the petitioner's response to the director's request for evidence. According to the evidence the beneficiary would: provide a complete analysis of a patient's illness or injury; analyze the medical significance of injury or disease; write reports to be used by the Workers Compensation Board, employer's insurance companies, Medicare and Medi-Cal; keep up to date on the latest medical research results and utilize the medical library to perform the research necessary to make a diagnosis on the cases that she is referred; and utilize medical journals, text books and medical research materials to obtain the analysis and evaluation of the patient's condition. The amount of time spent on research will be determined by the extent of the injury or rarity of the disease incurred for each case. The petitioner's time will be apportioned as follows:

- 30 percent of the time will be spent on analyzing the medical history of each patient in order to provide a complete analysis of the patient's injury or disease;
- 30 percent of the time will be spent writing reports which will be used by the Workers Compensation Board, Employer's Insurance Companies, Medicare and Medi-Cal;
- 20 percent of the time will be spent researching and keeping up to date on the latest medical research results by utilizing medical journals, text books and other medical research materials; [and]
- 20 percent of the time will be spent documenting the patient's illness or disease, medical history and physical examinations in order to formulate the strongest method of treatment for the patient.

The petitioner requires a minimum of a Doctor of Medicine degree for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief and additional information stating that the proffered position qualifies as a specialty occupation as it meets the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The petitioner insists that the proffered position is that of a medical or technical writer as defined in the *Handbook*:

Technical writers put scientific and technical information into easily understandable language. They prepare scientific and technical reports, operating and maintenance manuals, catalogs, parts lists, assembly instructions, sales promotion materials, and project proposals. They also plan and edit technical reports and oversee preparation of illustrations, photographs, diagrams, and charts. *Science and medical writers* prepare a range of formal documents presenting detailed information on the physical or medical sciences. They impart research findings for scientific or medical professions, organize information for advertising or public relations needs, and interpret data and other information for a general readership.

The duties of the proffered position do not coincide with those of technical writers, or science and medical writers. The beneficiary would spend approximately sixty percent of her time reviewing medical records and preparing reports to be submitted to administrative agencies and insurance companies. Twenty percent of her time would be consumed documenting patient's medical histories, and the remaining twenty percent performing related research in medical literature. The writing done by the beneficiary is not for the purpose of reporting research findings to the scientific or medical communities, but to present physician's findings to the aforementioned administrative agencies and insurance companies. The record is not clear as to whether those writings would be used to present medical opinions, or simply for such administrative tasks as billing support or the preparation of treatment summaries. It is clear, however, that the beneficiary's writings would be done under the supervision of the beneficiary's physician employer, and restate the physician's findings to those entities. The petitioner has not established that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the proffered position. Indeed, many of the cited duties are performed by nurses and/or medical records and health information technicians. Those positions do not require a minimum of a bachelor's degree, or its equivalent, for entry into the position. The petitioner has, therefore, failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has not established that a degree requirement is common to the industry in parallel positions among similar organizations. In support of this proposition the petitioner submitted five job advertisements indicating that a baccalaureate or graduate level education is required for medical/technical writer positions. The duties of the positions advertised, however, are not similar to the duties of the proffered position. Nor are the advertised positions with organizations similar in nature to that of the petitioner. Furthermore, five job advertisements are not sufficient in scope to establish an industry standard. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner does not assert that it normally requires a degree or its equivalent for entry into the proffered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties of the position are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4). As noted above, many of the duties are routinely

performed by nurses and/or medical records and health information technicians whose educational backgrounds are not at a baccalaureate level.

It should further be noted that counsel's assertions regarding the *Dictionary of Occupational Titles* SVP rating for the offered position do not establish that the position qualifies as a specialty occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification 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 petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.