



U.S. Citizenship
and Immigration
Services

[Handwritten initials]

[Redacted]

FILE: LIN 03 199 53455 Office: NEBRASKA SERVICE CENTER Date:

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]

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

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 office, and seeks to employ the beneficiary as a medical research associate. 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 states that the proffered position qualifies as a specialty occupation.

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 proceedings 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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a medical research associate. 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 this evidence the beneficiary would: review major professional medical journals for health issues and developments that are relevant to the medical office’s practice, paying attention to the latest developments in the field of OB/GYN medicine and the new lines of treatments available for gynecologic diseases; elicit detailed patient histories, discuss with the physician the patient’s charts and files, read medical literature especially in the field of OB/GYN medicine, and make suggestions/offer advice to the physician as to the best type of diagnosis and mode of treatment based on existing research data; provide physicians with the latest information from medical literature before, during and after treatment of patients, with the end result of finding the most relevant mode of treatment available for specific patients; assist in analysis of obstetrics laboratory results, and make written summaries as appropriate to aid the physicians in the expeditious determination of each patient’s medical situation; assist the main physician with academic research for the benefit of students (one physician is a professor at Northwestern University); develop and implement policies and procedures for documenting, storing, and retrieving research information, and for processing medical-legal documents, insurance data, and correspondence requests; perform medical research on the Internet; perform research in professional libraries; submit periodic reports to physicians regarding the status of research activities and compile summaries of same for quick reference; and perform other duties as directed. The petitioner requires a minimum of a bachelor’s degree in medical research, medical technology or a related health care field for entry into the proffered profession.

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 states that the proffered position qualifies as a specialty occupation.

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 duties of the proffered position are varied, but essentially combine duties normally

performed by a medical assistant, nurse, or similar worker in the healthcare field. For example, the beneficiary would elicit patient histories and discuss with the physician patients' charts and files as well as read relevant medical literature; assist in the analysis of lab results; and develop procedures for storing information and processing medical-legal documents, insurance data and correspondence requests. These duties are routinely performed by medical assistants, nurses or other healthcare workers with less than a baccalaureate level education. In addition to these functions, the beneficiary would perform general medical research on the Internet and at libraries. The research to be performed appears to be general in nature and will be used in-house by the office physicians. It is not research of such complexity and sophistication as to require a bachelor's degree in any specific specialty. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not established that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. In support of this assertion the petitioner submitted generic statements from five physicians that were apparently prepared for an unrelated proceeding which simply state that a medical research specialist is a specialized position requiring a bachelor's degree in science, law or research. The opinions do not state the basis of the opinion except to refer to the experience of the writer. Nor do the opinions indicate what the job responsibilities are for the "medical research specialist" about which the writers opine. As such, there can be no meaningful comparison of the duties of the proffered position with the positions referred to by the opinion writers. Furthermore, the letters indicate that unrelated degrees such as law and science will qualify applicants for the position. The letters are of no evidentiary value and the petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not established that it normally requires a degree or its equivalent for the proffered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, duties of the proffered position are not so complex or unique that they can only be performed 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. The duties are routinely performed by medical assistants, nurses, and/or other healthcare workers with less than a baccalaureate level education. The petitioner has failed to establish the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner also makes reference to other petitions for similar positions that were supposedly approved by CIS. This reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire records of proceeding in the petitions referred to by counsel. Accordingly, no comparison of the positions can be made. 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, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public

accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as a medical research associate in a physician's office. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute a violation of 8 C.F.R. § 214.2 paragraph (h).

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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