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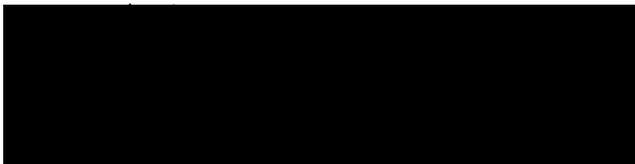
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FILE: WAC 03 220 51862 Office: CALIFORNIA SERVICE CENTER Date: AUG 11 2005

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 medical clinic/outpatient surgery center 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 on the ground that the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 records administrator. 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 performing the detailed and analytical review of the patient's medical condition/treatment/prognosis to confirm that the petitioner is providing proper and appropriate care for the patients; directing administration of medical records consistent with standards of accrediting and regulatory agencies and requirements of health care systems; analyzing patient data for reimbursement, quality of patient care, risk management and utilization of management; overseeing the administration of fiscal operations, such as budget planning, accounting and establishing rates for health care services; directing hiring of personnel; negotiating for improvement in medical equipment and supplies and related items; directing and coordinating activities of medical-related staff/administrative staff and services; developing policies and procedures relating to dealing with medical groups; coordinating activities of nursing, physical and occupational therapy, and other medical-related staff and administrative staff and related services; developing programs of research related to the care of patients, preventative medicine, medical and vocational rehabilitation and community health promotions. The petitioner provided a general estimate of the percentage of time to be spent on the job duties: administration of records and regulatory reform (30% of time); analysis of patients' medical records/bills (20% of time); directing and coordinating medical-related and administrative staff (20% of time); developing policies and procedures (15% of time); reviewing quality of patient care by reviewing patient records and other related data (15% of time). The petitioner indicated that the beneficiary would work 25 hours and that the position requires a minimum of a bachelor's degree in medicine or nursing. The petitioner indicated that the beneficiary would be supervising one to three employees.

The director decided that the petitioner failed to establish any of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director found the duties of the proposed position are a combination of several non-specialty occupations such as medical records and health information technicians and administrative services managers. The director indicated that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reports that a clerk or a medical records or health information technician position does not require a bachelor's degree; thus, the director determined that the position described by the beneficiary does not qualify as a specialty occupation.

The director noted that counsel cited to several precedent decisions and one federal court decision for the proposition that CIS must be consistent with the Department of Labor's *Dictionary of Occupational Titles* (*DOT*) and the *Handbook*. The director correctly noted that all of those cases were decided under the predecessor statute before the current definition of a specialty occupation existed. The director further noted that CIS considers the specific duties of the offered position combined with the nature of the petitioning entity's business operation. The director found that the majority of the duties were very general and could easily be done by an individual with less than a bachelor's degree. Therefore, the director determined that the petitioner has not sustained the burden of proof to establish that the position offered requires a baccalaureate

degree for entry into the position; the degree is common to the industry in parallel positions among similar organizations; the employer normally requires a degree or its equivalent; or that the specific duties are so specialized and complex that only a person with a bachelor's degree could perform the duties.

On appeal, counsel states that the proposed position is not analogous to a medical records and health information technician. Counsel submits a more detailed position description. Counsel contends that the duty of daily checking of all new patient files for accuracy and content requires a familiarity with medical terms and in-depth knowledge of exams, surgical and/or medical procedures. Counsel contends that the complexity of this function alone precludes a mere associate degree graduate from properly handling the tasks.

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 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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 duties of the proposed position are an amalgam of those of a head nurse or nurse supervisor and a medical records and health information technician as those occupations are described in the *Handbook*. The *Handbook* delineates head nurses or nurse supervisors as:

[Directing] nursing activities, primarily in hospitals. They plan work schedules and assign duties to nurses and aides, provide or arrange for training, and visit patients to observe nurses and to ensure that the patients receive proper care. They also may ensure that records are maintained and equipment and supplies are ordered.

The above excerpt reflects the beneficiary's duty to direct and coordinate the activities of medical-related and administrative staff and services; review patients' medical condition, treatment, and prognosis to confirm that the petitioner provided proper and appropriate care for patients; and negotiate for improvements in medical equipment and supplies.

The *Handbook* describes the duties of a medical records and health information technician position as follows.

Every time a patient receives healthcare, a record is maintained of the observations, medical or surgical interventions, and treatment outcomes. This record includes information that the patient provides concerning his or her symptoms and medical history, the results of examinations, reports of x rays and laboratory tests, diagnoses, and treatment plans. Medical records and health information technicians organize and evaluate these records for completeness and accuracy.

Technicians begin to assemble patients' health information by first making sure their initial medical charts are complete. They ensure that all forms are completed and properly identified and signed, and that all necessary information is in the computer. They regularly communicate with physicians or other healthcare professionals to clarify diagnoses or to obtain additional information.

Medical records and health information technicians assign a code to each diagnosis and procedure. . . .

Technicians also use computer programs to tabulate and analyze data to help improve patient care, to control costs, for use in legal actions, in response to surveys, or for use in research studies. Cancer registrars compile, maintain, and review records of cancer patients to provide information to physicians and for use in research studies.

Medical records and health information technicians' duties vary with the size of the facility. In large to medium-sized facilities, technicians may specialize in one aspect of health information, or supervise health information clerks and transcriptionists while a medical records and health information administrator manages the department. . . . In small facilities, a credentialed medical records and health information technician sometimes manages the department.

The beneficiary's duties relating to patient records are encompassed within the above description of a medical records and health information technician. The *Handbook* describes "a credentialed medical records and health information technician" as managing a [medical records] department in a small facility. The petitioner is a small facility with nine employees. Managing a small facility would include the beneficiary's duty to direct administration of medical records consistent with standards of accrediting and regulatory agencies and requirements of health care systems; and develop policies and procedures relating to dealing with medical groups. Technicians are also described in the *Handbook* as using "computer programs to tabulate and analyze data to help improve patient care, to control costs, for use in legal actions, in response to surveys, or for use in research studies." This relates to the beneficiary's duties, as discussed on appeal, of completing surveys of medical records requesting statistics and data related to medical records, and analyzing patient data for reimbursement, quality of patient care, risk management, and utilization of management.

The *Handbook* indicates that the occupations of head nurse, nurse supervisor, and medical records and health information technicians do not require a bachelor's degree in a specific specialty. For a head nurse or nurse supervisor position, the *Handbook* states "students must graduate from an approved nursing program and pass a national licensing examination in order to obtain a nursing license." The *Handbook* relays that:

There are three major educational paths to registered nursing: a bachelor's of science degree in nursing (BSN), an associate degree in Nursing (ADN), and a diploma.

For the occupation of medical records and health information technicians, the *Handbook* reports:

Medical records and health information technicians entering the field usually have an associate degree from a community or junior college. . . .

The *Handbook* continues:

Hospitals sometimes advance promising health information clerks to jobs as medical records and health information technicians, although this practice may be less common in the future. Advancement usually requires 2 to 4 years of job experience and completion of a hospital's in-house training program.

. . .

Experienced medical records and health information technicians usually advance in one of two ways—by specializing or managing. . . .

In large medical records and health information departments, experienced technicians may advance to section supervisor, overseeing the work of the coding, correspondence, or discharge sections, for example. Senior technicians with RHIT credentials may become director or assistant director of a medical records and health information department in a small facility. However, in larger institutions, the director is usually an administrator, with a bachelor's degree in medical records and health information administration.

The excerpts from the *Handbook* set forth above indicate that a bachelor's degree in a specific specialty is not required for a medical records and health information technician position, and that a senior technician with Registered Health Information Technicians (RHIT) credentials may become director or assistant director of a medical records and health information department in a small facility. Based on this information, the proposed position, which resembles that of a medical records and health information technician in a small facility, would not require a bachelor's degree in a specific specialty. The information from the *Handbook* also indicates that a bachelor's degree is not required for a head nurse or nurse supervisor position. Accordingly, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

No evidence in the record establishes that a specific degree requirement is common to the industry in parallel positions among similar organizations or shows that the proffered position is so complex or unique that it can be performed only by an individual with a degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Again, the *Handbook* reveals that the duties of the proposed position are an amalgam of those of a head nurse or nurse supervisor and a medical records and health information technician, and that these positions do not require a bachelor's degree in a specific specialty.

No evidence in the record establishes 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. On appeal, counsel contends that the duty of daily checking of all new patient files for accuracy and content requires a familiarity with medical terms and in-depth knowledge of exams, surgical and/or medical procedures. Counsel contends that the complexity of this function alone precludes a mere associate degree graduate from properly handling the tasks. Counsel's contentions are insufficient. Because the *Handbook* reveals that the duties of the proposed position are a combination of those of a head nurse or nurse supervisor and a medical records and health information technician, and that these positions do not require a bachelor's degree in a specific specialty, 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.