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FILE: WAC 03 139 51668 Office: CALIFORNIA SERVICE CENTER Date: DEC 22 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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned  
to the office that originally decided your case. Any further inquiry must be made to that office.

*for* *Michael T. Kelly*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The petitioner filed an appeal, which was summarily dismissed by the Administrative Appeals Office (AAO) on the ground that no appeal brief or additional evidence was submitted and the petitioner failed to specifically identify any erroneous conclusion of law or statement of fact in the director's decision on Form I-290B. The matter is now before the AAO on a motion for reconsideration. Counsel explains, and has submitted supporting evidence in the form of postal receipts, that an appeal brief and additional documentation was mailed to the service center four days after the appeal was filed. Copies of these materials have been resubmitted with the motion for reconsideration. The AAO will grant the motion. On reconsideration, the AAO will uphold the director's decision, dismiss the appeal, and deny the petition.

The petitioner is a provider of medical technology services to doctors' offices. It seeks to employ the beneficiary as a utilization coordinator and to classify him 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 does not qualify as 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.

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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; (5) Form I-290B, (6) the AAO's initial decision, and (7) the motion for reconsideration, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a company that runs the in-house laboratories of various medical offices. The petitioner indicates that it began operations in 2001 and had gross annual income in 2002 of \$121,000. As explained in its response to the RFE, the petitioner examines its clients' laboratory equipment and software; recommends which to use and acquire; selects, trains and assigns laboratory staff and/or technicians to various medical clinics; supervises them; and responds to any technical and mechanical problems in the laboratories. The petitioner's organizational chart shows three positions in the company: [REDACTED] and the utilization coordinator, slated for the beneficiary. In its initial letter to the service center the petitioner stated that the beneficiary was being offered the position of utilization coordinator to ensure that appropriate service is provided to physician office laboratories, that employee records reflect compliance with licensure requirements, to assign workers to their duties, to review and recommend equipment purchases to management, and to coordinate training programs. In its response to the RFE the petitioner provided additional details about the utilization coordinator's duties, stating that the focus will be on creating a system of quality assurance and control, monitoring and controlling work flow, and record-keeping. The beneficiary is qualified for the position of utilization coordinator, the petitioner asserts, by virtue of his bachelor of science degree in biology, granted by the University of San Carlos in Cebu City, the Philippines, on March 21, 1992, his doctor of medicine degree from the Cebu Institute of Medicine, granted on October 31, 1996, and his experience in the Philippines as a laboratory manager.

The director determined that the duties of the proffered position reflected various occupations described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, most particularly the occupations of clinical laboratory technologist or technician and medical health services manager, but also the occupations of human resources specialist and quality assurance officer. The director referenced the information in the *Handbook* indicating that a baccalaureate level of training is not a normal, industry-wide minimum requirement for entry into those occupations. The evidence of record did not establish that the petitioner normally requires applicants for the proffered position to have a baccalaureate or higher degree in the field, the director continued, or that the position is so complex or unique that a baccalaureate or higher degree in a specialty is required to perform it. Nor did the record show that the duties of the proffered position are so specialized and complex that baccalaureate level knowledge in a specialty is required to perform them. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In his appeal brief counsel reiterates that the petitioner runs the in-house medical laboratories of its clients' medical offices – a total of five at the time – overseeing the use and acquisition of equipment, training laboratory staff and/or technicians, supervising them on the job, and when necessary performing laboratory tests, analyzing the results, and making recommendations on further tests. The position of utilization coordinator, counsel explains, is responsible for such tasks as preparing a quality assurance and

improvement plan for each in-house laboratory, setting up reporting and control systems, recommending staffing requirements, preparing financial feasibility analysis for the procurement of testing equipment and supplies, monitoring and controlling work flow, and record-keeping. Whether classified as a medical technologist or a health services manager, counsel contends, the position requires a bachelor's degree. Furthermore, counsel maintains that the director's finding that the tasks of the proffered position touch on four different occupational categories in the *Handbook* shows that the duties the position are so specialized and complex that their performance requires baccalaureate level knowledge.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

Based on the petitioner's description of the proffered position and the documentation of record, the AAO determines that the utilization coordinator position at issue in this petition is closer to that of a health services manager than to that of a medical technologist or medical technician, as described in the DOL *Handbook*. Medical technologists and medical technicians (also called clinical laboratory technologists and technicians) are two sub-categories of the *Handbook's* occupational category entitled clinical laboratory technologists and technicians. As described in the *Handbook*, 2004-05 edition, at 313:

Clinical laboratory personnel examine and analyze body fluids, tissues, and cells. They look for bacteria, parasites, and other microorganisms; analyze the chemical content of fluids; match blood for transfusions; and test for drug levels in the blood to show how a patient is responding to treatment. These technologies also prepare specimens for examination, count cells, and look for abnormal cells. They use automated equipment and instruments capable of performing a number of tests simultaneously, as well as microscopes, cell counters, and other sophisticated laboratory equipment. Then they analyze the results and relay them to physicians . . . .

*Clinical laboratory technologists* . . . perform complex chemical, biological, hematological, immunologic, microscopic, and bacteriological tests. Technologists microscopically examine blood, tissue, and other body substances. They make cultures of body fluid and tissue samples, to determine the presence of bacteria, fungi, parasites, or other microorganisms. Clinical laboratory technologists analyze samples for chemical content or a chemical reaction and determine blood glucose and cholesterol levels. They also type and cross match blood samples for transfusions.

Clinical laboratory technologists evaluate test results, develop and modify procedures, and establish and monitor programs, to ensure the accuracy of tests. Some clinical laboratory technologists supervise clinical laboratory technicians . . . .

*Clinical laboratory technicians* perform less complex tests and laboratory procedures than technologists perform. Technicians may prepare specimens and operate automated analyzers, for example, or they may perform manual tests in accordance with detailed instructions . . . . They usually work under the supervision of medical and clinical laboratory technologists or laboratory managers.

The duties of the proffered position do not involve any of the hands-on laboratory tasks described above. Rather, the duties described by the petitioner involve oversight, organizational, and managerial functions in the laboratories of client medical offices. These duties reflect the *Handbook's* occupational category of medical and health services managers, which is described, in pertinent part, as follows:

The occupation, medical and health services manager, encompasses all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system . . . .

Large facilities usually have several assistant administrators to aid the top administrator and to handle daily decisions . . . .

In smaller facilities, top administrators handle more of the details of daily operations . . . .

Clinical managers have more specific responsibilities than do generalists, and have training or experience in a specific clinical area . . . . Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers . . .

*Handbook*, 2004-05 edition, at 55-56. With respect to the educational requirements of medical and health services managers, the *Handbook* states the following:

A master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations. Physicians' offices and some other facilities may substitute on-the-job experience for formal education.

*Handbook, id.*, at 56. As indicated by the petitioner, the duties of the utilization coordinator are to be performed for client physicians' offices. According to the *Handbook*, medical and health services managers working in that type of venue may substitute experience for an educational degree. Based on the foregoing information, the AAO determines that a baccalaureate degree in a specific specialty, or its equivalent, is not the normal minimum requirement for entry into the proffered position. Accordingly,

the position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, there is no evidence in the record that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record demonstrate that the proffered position is so complex or unique that it can only be performed by an individual with a specialty degree, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Counsel asserts that a declaration of the petitioner's CEO, submitted with the appeal brief, attests to the complexity and uniqueness of the position, but that declaration basically restates the previously described duties of the position and fails to show that they could not be performed by an experienced individual with on-the-job experience and less than baccalaureate level education in a specific job-related specialty.

With respect to the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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