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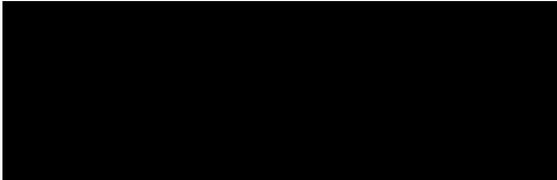
FILE: EAC 03 260 55446 Office: VERMONT SERVICE CENTER Date: **DEC 27 2005**

IN RE: Petitioner:  
Beneficiary:



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 practice 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 because the proffered position is not a specialty occupation. On appeal, counsel submits 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 records administrator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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 planning, developing, and administering a health information system consistent with accrediting and regulatory agency standards; developing and implementing policies and procedures to document, store, and retrieve information and process medical-legal documents, insurance data, and correspondence requests in conformity with federal, state, and local statutes; supervising preparation and analysis of medical documents; participating in developing and designing computer software for the computerized health information system; coordinating medical care evaluations with the physician and developing criteria and methods for evaluations; analyzing patient data for reimbursement, facility planning, quality of patient care, risk management, utilization management, and research; and managing patient medical records. The petitioner's document entitled "Job Posting" indicates the proposed position requires a bachelor's degree with courses in healthcare and computer science.

The director denied the petition, finding that the proposed position resembled a health information technician as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this occupation requires only an associate's degree. The director found that the petitioner established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proposed position is a specialty occupation based on information in the *Dictionary of Occupational Titles (DOT)*. Counsel also references a position evaluation from [REDACTED] [REDACTED] associate professor of radiation oncology and internal medicine at the University of Virginia, to show that the proposed position is similar to a medical records administrator, and that it is an industry standard to require a baccalaureate degree or its equivalent in medical records administration or a related field for this occupation.

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.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.

Counsel's reference to and assertions about the relevance of information from the *DOT* is not persuasive. The *DOT's* specific vocational preparation (SVP) rating does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. This 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 document in the record titled "Job Posting" describes the proposed position. This document states that the petitioner requires a [b]achelor's degree with courses in healthcare and computer science." The petitioner's letter dated November 4, 2003 states:

A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into this particular position. The bachelor's degree requirement is [the] industry standard for hospitals, private medical practices, and clinics. Medical [r]ecords [a]dministrators are not hired without a bachelor's degree that includes coursework in computer science and information management, coursework in anatomy and physiology, clinical work as part of a professional team responsible for patient care and record keeping, and other courses related to healthcare or computer systems.

To qualify as a specialty occupation, a position must require a baccalaureate or higher degree in a *specific specialty* that is directly related to the proposed position. As indicated in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

For entry into the proposed position the record reflects that the petitioner requires a bachelor's degree with coursework in healthcare and computer science; requiring coursework in a given area is not the same as requiring a baccalaureate degree *in a specific specialty* such as medical records administration.

The AAO notes that on appeal counsel refers to [REDACTED] evaluation to establish that the industry standard is to require a baccalaureate degree, or its equivalent, in medical records administration or a related field for the proposed position. However, [REDACTED] educational requirement differs from the petitioner's requirement of a baccalaureate degree with coursework in healthcare and computer science; consequently, [REDACTED] educational requirement carries little or no probative value in establishing the petitioner's educational requirement. The position cannot be classified as a specialty occupation, as the petitioner failed to specify a degree in a specialty.

The AAO's conclusion, from the evidence to which it has referred, is that the petitioner fails to satisfy the any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific degree requirement is common to the industry in parallel positions among similar organizations, or in that alternative, the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty; the petitioner normally requires a degree or its equivalent for the position; or the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

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 on this ground.

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.