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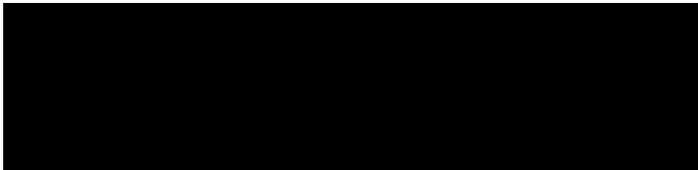


FILE: WAC 03 005 54775 Office: CALIFORNIA SERVICE CENTER Date: FEB 08 2005

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 California 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 skilled nursing facility with 67 employees. It seeks to hire the beneficiary as a utilization review coordinator. The director denied the petition because he determined the proffered position did not meet the criteria required for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with a statement and supporting evidence. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a utilization review coordinator. Evidence of the beneficiary’s duties includes: the Form I-129, with a September 26, 2002 letter of support from the petitioner; and counsel’s response to the director’s request for evidence.

At the time of filing and in response to the director’s request for evidence, the petitioner provided a detailed description of its proffered position, stating that the beneficiary would be required to:

- Coordinate special Medicaid programs by independently planning, developing, initiating, and evaluating services provided through multiple agencies or by analyzing Medicaid, and state and local hospitalization acute care claims to determine medical necessity and to approve or deny the payment of the claim;
- Research the availability and utilization of program standards and provider qualification requirements by reviewing the scope of practice, professional literature and information from states providing similar programs;
- Identify problems affecting program growth;
- Recommend necessary changes in program requirements to ensure quality and quantity of services provided;
- Develop and implement statewide quality assurance surveys for data collection from recipients of services to evaluate quality of services, recipient satisfaction with services, and areas of improvement;
- Review program records, identify appropriateness of specialty services provided to Medicaid recipients, and provide technical assistance, consultation and training in program areas;

- Monitor and evaluate hospital utilization review plans and utilization review meetings to determine compliance with state and federal regulations;
- Review and evaluate in-house patient charts on Medicaid and state and local hospitalization recipients to determine if severity of illness and intensity of service criteria were met in relation to acute care provided;
- Evaluate hospital admissions documentation and other data to ensure that required documentation is included in patient records;
- Make recommendations for corrective action to be taken by hospital on basis of on-site review;
- Determine the statistics for the rate at which claims are not paid on-line through the Medicaid Management Information System, maintain statistical data on second surgical opinions with days of hospital stay approved and days denied, and maintain the records of the total for cost avoidance;
- Determine frequency of non-compliance with state and federal utilization review guidelines and the continuity of health care delivery and potential fraud and abuse cases to be referred for investigation;
- Provide training to quality assurance coordinators, practitioners and others on quality assurance practices;
- Consult with medical staff in the review of denials of appeals of hospital lengths of stay attributable to a specific medical condition to assure that full consideration was given to the denial of the claim; and
- Research and respond in writing to inquiries about policy and procedure from state and federal agencies, and provide program service information for federal and state reporting and validation requirements.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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.Min. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In his denial, the director found the duties of the proffered position to combine certain aspects of the occupations of medical health manager and medical records and health information technician, as described in the 2002-2003 edition of the *Handbook*, concluding that neither occupation had a baccalaureate or higher degree as the minimum requirement for entry into the occupation. Following its own review of these occupational titles and the petitioner's description of its proffered position, the AAO does not concur with the director's characterization of the petitioner's position. Based on its analysis, the AAO withdraws the director's finding that the proffered position is an amalgam of the occupations of medical and health services manager, and medical records and health information technician.

Instead, it concurs with the petitioner's identification of its position as a utilization review coordinator, finding it to be a distinct occupation with a well-established role in health-care facilities across the United States. Those who are employed as utilization review coordinators evaluate the use of health services, including the appropriateness of patients' admissions and lengths of stay, as well as the ancillary services provided to patients during their stays. Their basic function is to ensure that the services provided by health care organizations are medically necessary, provided at the appropriate level of care, and comply with government and insurance company reimbursement policies. When employed directly by a health care organization, as in the instant case, utilization review coordinators work within that organization's quality assurance system, using norms, criteria and standards adopted by its medical staff.

As already noted, the AAO routinely relies on the DOL *Handbook* to determine whether a baccalaureate or higher degree in the specialty is normally the minimum requirement for entry into the position. However, in this instance, the AAO has found no occupation entitled utilization review coordinator in the 2004-2005 edition of the *Handbook*, nor any job with enough similarities to this occupation to allow the AAO to rely on its educational requirements. Although the AAO is aware that the DOL *Dictionary of Occupational Titles (DOT)* does discuss the occupation of utilization review coordinator, the *DOT* is not a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. It provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the level of education, training, and experience required to perform the duties of that occupation and, therefore, cannot serve as a reference for AAO analysis.

In that the *Handbook* provides no information regarding the normal educational requirements for the occupation of utilization review coordinator, the AAO will rely on the specific job duties described by the petitioner and the documentation it has submitted as evidence of a degree requirement to determine whether it has met its burden of proof and established that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the proffered position.

At the time of filing, counsel asserted that, as the position of utilization review coordinator was in the field of medicine and health, it was specifically included in the definition of specialty occupation at 8 C.F.R. § 214.2(h)(4)(ii). He supported this statement by providing materials that discuss the occupation of utilization review coordinator from the *Enhanced Guide for Occupational Exploration (EGOE)*, published by Indianapolis-based JIST Works, Inc., and the Virginia Department of Human Resources. The AAO notes, however, that the *EGOE* material submitted by counsel states only that the occupation of utilization review coordinator requires a bachelor's degree. It identifies no requirement that the bachelor's degree be in a

specialty that is directly related to the occupation, per CIS requirements. Further, the Internet job description published by the State of Virginia for a "utilization review analyst senior" fails to satisfy the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1), as it states only that an individual seeking employment as a utilization review analyst senior have graduated from a college or university "with course work in nursing or medicine." It does not specify the field(s) in which the degree must be obtained.

In response to the director's request for evidence, counsel supplemented the above documentation, providing a second State of Virginia position description for a utilization review analyst, a 1996 Bureau of Labor Statistics' (BLS) listing of new and emerging occupations that includes utilization review coordinators, and Internet information about the American Board of Quality Assurance and Utilization Review Physicians. However, like the documentation submitted at the time of filing, this information is not responsive to the degree requirement of the first criterion. The AAO notes that the educational requirements related to the second Virginia job position description are even less specific than those of the first, requiring only that a job applicant have graduated from an accredited college or university "with course work in social services, a medical discipline, or a related field." The BLS materials on utilization review coordinator do not discuss the degree requirements attached to the occupation. The Internet information on the American Board of Quality Assurance and Utilization Review Physicians, which counsel offers to prove the growing number of utilization review coordinators, also provides no documentation regarding the occupation's degree requirements. As a result, these submissions cannot serve as evidence that the occupation of utilization review coordinator requires those seeking employment to have the minimum of a baccalaureate or higher degree, or its equivalent.

Based on the evidence before it, the AAO concludes that the evidence submitted by counsel on the petitioner's behalf fails to establish that its proffered position of utilization review coordinator meets the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The evidence in the record does not establish that the occupation normally imposes a baccalaureate or higher degree requirement on those seeking entry-level employment, nor that it requires a degree in a specific specialty. When a job can be performed by a range of degrees or a degree of generalized title without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge, as required by Section 214(i)(1) of the Act, a petitioner must establish not that the position requires the attainment of a generic bachelor's or higher degree, but that the position requires the attainment of a bachelor's or higher degree in a field of study directly related to the specialty.

The AAO now turns to a consideration of whether the petitioner, unable to establish its proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three criteria remaining: a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or 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. A review of the record finds the petitioner to have submitted no evidence to establish that its degree requirement is an industry norm or that its proffered position is more specialized and complex than other utilization review

coordinator jobs. It has, however, offered evidence in response to the requirements at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) -- whether it normally requires a degree or its equivalent for its position.

To determine a petitioner's ability to meet the third criterion, the AAO routinely reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In this case, however, counsel has submitted only an announcement for the proffered position stating a requirement for a bachelor's degree in social services or a health-related field. As the petitioner has offered no documentation of its past hiring practices regarding the proffered position or its requirements in filling similar positions, the AAO has no evidence on which to base an analysis as to whether the petitioner normally imposes a degree for its proffered position. Accordingly, the AAO finds that the petitioner has failed to establish its position as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO also notes that the announcement submitted by counsel not only fails to support the petitioner's efforts to establish its position as a specialty occupation, it serves to negate such a designation. In that the announcement states the petitioner's willingness to accept applicants with a range of degrees, it undermines the petitioner's ability to establish a critical element of the specialty occupation -- that it requires a degree in a specific specialty directly related to its position. As already noted, an occupation that can be performed by a range of degrees or a degree of generalized title does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*

For reasons related in the preceding discussion, the petitioner has failed to establish that its proffered position is a specialty occupation. Accordingly, although the director's finding regarding the nature of the proffered position has been withdrawn, 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.