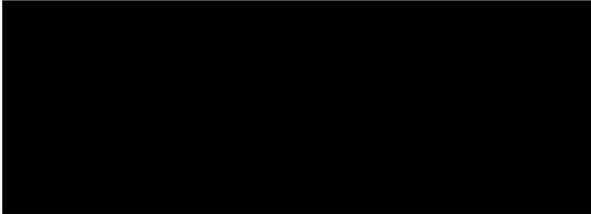


...to
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

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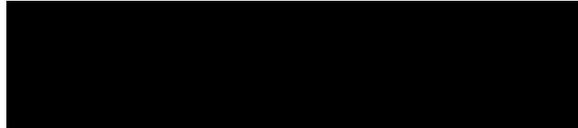


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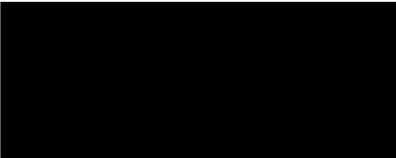
FILE: WAC 02 156 50098 Office: CALIFORNIA SERVICE CENTER Date:

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 physical therapy clinic that seeks to employ the beneficiary as an administrative manager. 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 a brief and previously submitted and 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 an administrative manager. 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 managing personnel; maintaining and developing patient and therapist schedules; coordinating and facilitating insurance matters, litigation and patient files, and billing; maintaining billing and recordkeeping; overseeing patients' needs for supplies and equipment; analyzing and organizing office operations and procedures; formulating procedures for systematic file retention, protection, retrieval, and transfer; maintaining and coordinating the system into a network; providing monthly financial reports to management; analyzing data and information; writing instructions to guide operating personnel. The petitioner's October 8, 2002 letter elaborated on the duties of the proffered position. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree or its equivalent in business administration or commerce.

The director determined that the proffered position was not a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the beneficiary's duties are an amalgam of the duties of an administrative services manager and a financial clerk or bookkeeper, occupations that do not require a bachelor's degree in a specific specialty. The director found the submitted job postings unpersuasive in establishing the proffered position as a specialty occupation since their duties differed from those of the proffered position.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel contends that the director erroneously likened the beneficiary's duties to the job classifications of a financial clerk or bookkeeper and an office and administrative support worker supervisor and manager. Counsel states that the *Handbook* shows that administrative services managers, the classification similar to the proffered position, may require a bachelor's degree. Counsel refers to the *Dictionary of Occupational Titles (DOT)*, the *Occupational Information Network (O*Net)*, and the *O*Net Online* to state that a baccalaureate degree is required for the proffered position, administrative manager. Counsel recounts the beneficiary's duties, emphasizing they involve more than secretarial, mailroom, and support activities, and that the accounting duties exceed those of a bookkeeper and financial clerk. Counsel maintains that the beneficiary's duties correspond to those of an administrative services manager because they encompass supervision of personnel, planning, design, and coordination of office functions. Referring to the *Handbook's* information about administrative services managers, counsel claims that it states that managers of highly complex services such as contract administration generally need a bachelor's degree in business, human resources, or finance. Counsel states that the beneficiary will supervise physical therapists that hold bachelor's degree in physical therapy in administrative areas such as privacy rights. Counsel contends that the director failed to explain how the duties in the job postings differ from the proffered position.

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 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 a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

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 asserts that the proffered position is a specialty occupation because of information in the *DOT*, *O*Net*, and *O*Net Online*. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL has replaced the *DOT* with the *O*Net*. Both the *DOT*, *O*Net*, and *O*Net Online* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of information in the *DOT*, *O*Net*, and *O*Net Online*.

Counsel states that an administrative services manager is similar to the proposed position. A review of the *Handbook* discloses that the duties of the proffered position are an amalgam of the duties of medical assistants and office and administrative support supervisors and managers, occupations that do not require a bachelor's degree with a specific specialty. The *Handbook* describes medical assistants as performing routine administrative and clinical tasks to keep the offices of health practitioners running smoothly. In small practices, medical assistants usually are "generalists," handling both administrative and clinical duties. In addition to other duties, they update and file patients' medical records, fill out insurance forms, handle correspondence, schedule appointments, handle billing and bookkeeping, and purchase and maintain supplies and equipment. Administrative support supervisors and managers are described in the *Handbook* as "[p]lanning the work and supervising the staff." They allocate work assignments and issue deadlines, oversee work, evaluate each worker's performance and discuss problems with employees, send employees to training courses, and demote or dismiss workers. Office and administrative support supervisors and managers usually interview and evaluate prospective clerical employees, provide orientation to acquaint them with the

organization and its operating routines, actively recruiting new workers, train new employees in organization and office procedures, and act as liaisons between the clerical staff and the professional, technical, and managerial staff. The *Handbook* depicts office and administrative support supervisors and managers as resolving interpersonal conflicts among the staff.

Like the beneficiary who will manage personnel; maintain patient and therapist schedules; handle insurance matters, litigation and patient files, billing and recordkeeping; oversee supplies and equipment; analyze and organize office operations and procedures; formulate procedures for file retention, protection, retrieval, and transfer; coordinate the system into a network; and write instructions to guide operating personnel the *Handbook* describes medical assistants as handling patients' medical records and files, insurance forms, and billing and bookkeeping; scheduling appointments; and purchasing and maintaining supplies and equipment, and administrative support supervisors and managers as allocating work and supervising staff, sending employees to training courses, dismissing workers, interviewing and evaluating prospective clerical employees, providing orientation to acquaint them with the organization and its operating routines, recruiting new workers, training new employees in organization and office procedures, and acting as liaison between the clerical staff and the professional, technical, and managerial staff. Thus, the duties of the proffered position closely resemble those of medical assistants and administrative support supervisors and managers. Accordingly, the petitioner cannot 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, administrative manager, because the *Handbook* reveals that these occupations do not require a bachelor's degree in a specific specialty.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to job postings.

For various reasons, the postings are not persuasive. Nearly all of the organizations in the postings differ in nature, size, or scope from the petitioner, a physical therapy clinic with 12 employees. Planned Parenthood of Minnesota and Family Planning Specialists Medical Group provide family planning services and The University of Texas – Houston Health Service Center and South Carolina Community Health Center are health clinics, not physical therapy clinics, therefore differing in scope and nature from the petitioner. The posting for Hawthorn Medical Associates, LLC, a multi-specialty medical group, did not explain the specific nature of the medical group. As such, the AAO cannot determine whether it is similar to the petitioner. The postings from Lifelong Medical Care, Mammoth Hospital, and Spherion did not indicate that the candidate's bachelor's degree must be in a specific specialty. For the stated reasons, the postings are not persuasive in establishing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Contrary to the director's conclusion that the beneficiary's duties differ from those of the job postings, the AAO finds that the duties described in the postings from The University of Texas – Houston Health Service Center, South Carolina Community Health Center, Mammoth Hospital, and Lifelong Medical Care do encompass the beneficiary's duties. Nonetheless, as already discussed, the nature of The University of Texas

– Houston Health Service Center and South Carolina Community Health Center differ from the petitioner, and Mammoth Hospital and Lifelong Medical Care do not require a bachelor’s degree in a specific specialty.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Again, the *Handbook* discloses that the duties of the proffered position are performed by medical assistants and office and administrative support supervisors and managers, occupations that do not require a bachelor’s degree in a specific specialty.

Nor is there evidence in the record to establish 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 in a specific specialty. As already discussed, the *Handbook* discloses that the duties of the proffered position are performed by medical assistants and office and administrative support supervisors and managers, occupations that do not require a bachelor’s 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.

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.