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U.S. Citizenship
and Immigration
Services

Da2



FILE: WAC 03 062 51283 Office: CALIFORNIA SERVICE CENTER Date: JUN 17 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

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 clinical 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 additional documents.

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 notice of intent to deny; (3) the petitioner's response to the director's requests for evidence; (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 clinical manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail providing direction of operations; evaluation and selection of medical equipment, procurement of professional materials, participation in the selection of staff, assigning and ensuring work performed per requirements; reviewing and analyses of medical and business reports, records, and, coordinating with personnel, including the doctor, to obtain data required for planning activities, such as new commitments, status of work in progress, and problems encountered; development of organization related to policies, practices, and attainment of operating goals; assignment/delegation of responsibility for specified work or functional activities; gives work directions, resolves problems, prepares schedules, and sets deadlines to ensure timely completion of work; coordinates activities of the business to ensure efficiency and economy; monitors and analyzes costs and prepares budget, using computer; evaluates current procedures and practices for accomplishing company objectives to develop and implement improved procedures and practices.

The petitioner stated that the position requires the application of a general body of knowledge normally obtained in an academically recognized course of study leading to a bachelor's degree or its equivalent in the medical field.

The director issued a request for evidence, specifically requesting a detailed description of the work done and the percentage of time to be spent on each duty. The director also requested evidence of the degree equivalence and evidence that the beneficiary has training and/or experience in the specialty occupation in regards to business administration. Counsel responded to the director's request with a breakdown of the percentage of time spent on the duties of the proffered position. Additionally, the petitioner provided an education and experience evaluation indicating that the beneficiary has attained the equivalent of a bachelor's degree in Health Care Administration/Health Facilities Administration for a university in the United States.

The director issued a second request for evidence requesting a copy of the petitioner's business license, an organizational chart and copies of Form DE-6 Quarterly Wage Report for the last eight quarters.

The director determined that the proffered position was not a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director concluded that a medical and health services manager is not a specialty occupation because a wide range of educational backgrounds is considered suitable for entry in this position. Additionally, the director noted that the beneficiary possesses a Doctor of Medicine degree yet the record does not indicate that the beneficiary possesses a license to practice medicine in the State of California. Furthermore, the director indicated that the duties described resemble the role of a general manager, which is not considered a specialty occupation. The director determined that the petitioner did not meet any of the four criteria under 8 C.F.R. § 214(h)(iii)(A).

On appeal, counsel states that the proffered position, medical clinic manager, is a specialty occupation. Counsel explains that the duties require a bachelor's degree, at a minimum, because "these duties require analysis of a medical doctor's work." Counsel adds that the position of medical clinical manager has two main aspects: administrative and medical. Counsel states that the beneficiary will be studying patient records and making recommendations for the final approval of the clinic's doctor. Additionally, the beneficiary will be conducting research which requires a knowledge of the field. Counsel notes that the remaining duties will involve the creation and administration of the procedures and policies at the clinic.

Counsel contends that the *Handbook* support his contention that the medical clinical manager qualifies as a specialty occupation due to its degree requirements.

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.

Turning to the *Handbook*, a review of it reveals that that the position medical and health services manager may be a specialty occupation. The *Handbook* indicates that:

Medical and health services managers include specialist and generalist. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system.

The *Handbook's* section on training for medical and health service managers states:

[a] master's degree in health services administration, long-term care administration, health sciences, public health, public health administration, or business administration is the standard credential for most generalist in the field [p]hysicians' offices and some other facilities may substitute on-the-job experience for formal education.

The *Handbook* notes that a range of education levels may be suitable for medical and health services managers depending on the size and type of facility. The petitioner indicates on the Form I-129 that it has five employees and a gross annual income of \$446,517. The submitted Forms DE-6 indicate a range of five to seven employees. The petitioner indicated that the beneficiary would confer and coordinate activities with medical doctors and other professionals on a daily basis yet the organizational chart provided by the petitioner indicates only one physician on the premises. Upon review of the record, the *Handbook* does not support the conclusion that in a physician's office similar to the petitioner in the proffered position would be a medical and health services manager at the specialty occupation level.

Thus, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on submitted internet job postings from a wide variety of companies which include a medical practice, a state-wide healthcare system, a home healthcare provider, and a correctional facility healthcare provider.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. A deficiency in the postings is that the facilities are either obviously dissimilar to the petitioner or their nature is undisclosed. For example, The GEO Group, delivers correctional and detention management, medical and mental health rehabilitation service to local and national agencies; Hawaii Pacific Health is Hawaii's largest healthcare provider. Moreover, most of the advertised job descriptions are dissimilar to the proffered position. For instance, Hawaii Pacific Health's posting is for a manager of cardiology and health education and requires three or more years of strong cardio-vascular experience. Although the petitioner provided job postings for medical practices there is insufficient information in the record to establish that the advertising medical practices and the petitioner are of the same size. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

Because the proffered position is newly created, the petitioner cannot establish that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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. However, as discussed above, based on the *Handbook's* discussion that physician's offices and some other facilities may substitute on-the-job training for formal education, the proffered position does not meet the requirements in which a medical and health services manager requires a baccalaureate degree in a specialty as the minimum for entry into the occupation. On appeal, counsel explains that the beneficiary will "be studying patient records and making recommendations for the final approval of the clinic's doctor." Counsel adds "[the beneficiary] will do medical research, which also requires a comprehensive knowledge in the field." Counsel explains that this is why the proffered position requires formal training in medicine. To support his argument that the position is a specialty occupation based on the complexity of the duties, counsel states:

given the complex nature of the position and the serious misinformation in the medical field, it is imperative that the petitioner hire an individual who at a minimum possesses a bachelor's degree or its equivalent to perform the important research that must be conducted.

The petitioner has not described the specific duties and responsibilities to be performed by the beneficiary in relation to its particular business e.g. the kind of medical research and how the research will be implemented in relation to its business. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

There is no evidence in the record that would show that the duties of the proffered position rise beyond managing a physician's office. Consequently, 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.