

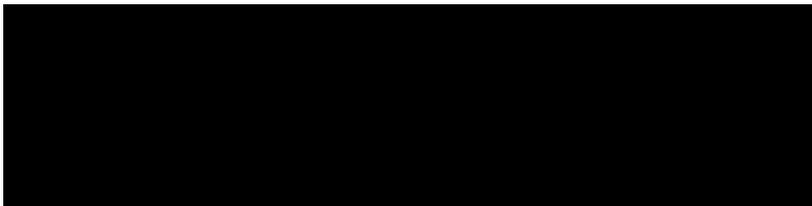
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U.S. Citizenship
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Services

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DA

FILE: WAC 04 023 50313 Office: CALIFORNIA SERVICE CENTER Date: JUN 28 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 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 home health services company 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 on the ground that the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 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 planning, evaluating, and overseeing the medical records of homecare patients; formulating policies and procedures regarding content, processing, and confidentiality; responding to requests for release of patient records in accordance with rules and regulations; completing surveys of medical records requesting statistics and data related to medical records; analyzing patient data for reimbursement, quality of patient care, risk management, and utilization of management; overseeing the administration of fiscal operations; establishing rates for healthcare services; directing the hiring of personnel; negotiating for improvement in medical equipment and supplies; directing and coordinating the activities of medical-related and administrative staff and services; developing policies and procedures relating to dealing with medical groups; directing and coordinating activities of nursing, physical and occupational therapy and other medical-related staff; developing research programs relating to preventive medicine, medical and vocational rehabilitation and community health promotions, and the care of the elderly, invalid, and infirm; reviewing patients' medical condition, treatment, and prognosis to confirm that the petitioner provided proper and appropriate care for patients; directing the administration of medical records consistent with standards of accrediting and regulatory agencies and requirements of healthcare systems. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in medicine, nursing, or a related field.

The director decided that the petitioner failed to establish any of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director found the duties of the proposed position general and administrative in nature, and aligned with those of a clerk or a medical records or health information technician as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director relayed that the *Handbook* reports that a clerk or a medical records or health information technician position does not require a bachelor's degree. The director further conveyed that if the position had qualified as a specialty occupation, the *Handbook* indicates that medical record administrators require a bachelor's degree in medical records or health information administration; thus, the director found no correlation between the beneficiary's doctorate of medicine and the proposed position.

On appeal, counsel states that the proposed position is not analogous to a medical records and health information technician. Counsel emphasizes that the proposed position's duties reflect those of an administrator and cites to the dictionary to define the term "administrator." Counsel refers to information in the *Dictionary of Occupational Titles (DOT)*, the *Handbook*, the *SOC O*Net*, and a prior AAO decision to show that the proposed position is a specialty occupation. Counsel asserts that the *Handbook's* statement that a master's degree in health services administration or health sciences is appropriate for medical and health services managers, shows that a strong correlation exists between the beneficiary's degree and the proposed position in that health science is the observation, identification, description, and theoretical explanation of natural phenomena and is the methodological activity, discipline, and study of a subject, which is health; thus, the beneficiary's doctorate of medicine would be required for the proposed position. Counsel states that the

petitioner's size, newness of operation, and scope are not relevant in determining whether the proposed position is a specialty 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.

Counsel refers to a prior AAO decision to establish that the proposed position is a specialty occupation. This record of proceeding does not, however, contain all of the supporting evidence submitted in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the original H-1B petition was approved in error. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The AAO will next consider 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 asserts that the proffered position is a specialty occupation based on information in the *DOT*. However, 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 Department of Labor (DOL) has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and the *O*Net* 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 an 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* and *O*Net*.

The duties of the proposed position are an amalgam of those of a head nurse or nurse supervisor and a medical records and health information technician as those occupations are described in the *Handbook*. The *Handbook* delineates head nurses or nurse supervisors as:

[Directing] nursing activities, primarily in hospitals. They plan work schedules and assign duties to nurses and aides, provide or arrange for training, and visit patients to observe nurses and to ensure that the patients receive proper care. They also may ensure that records are maintained and equipment and supplies are ordered.

The above excerpt reflects the beneficiary's duty to direct and coordinate the activities of medical-related and administrative staff and services; review patients' medical condition, treatment, and prognosis to confirm that the petitioner provided proper and appropriate care for patients; and negotiate for improvement in medical equipment and supplies.

The *Handbook* describes the duties of a medical records and health information technician position as follows.

Every time a patient receives healthcare, a record is maintained of the observations, medical or surgical interventions, and treatment outcomes. This record includes information that the patient provides concerning his or her symptoms and medical history, the results of examinations, reports of x rays and laboratory tests, diagnoses, and treatment plans. Medical records and health information technicians organize and evaluate these records for completeness and accuracy.

Technicians begin to assemble patients' health information by first making sure their initial medical charts are complete. They ensure that all forms are completed and properly identified and signed, and that all necessary information is in the computer. They regularly communicate with physicians or other healthcare professionals to clarify diagnoses or to obtain additional information.

Medical records and health information technicians assign a code to each diagnosis and procedure. . . .

Technicians also use computer programs to tabulate and analyze data to help improve patient care, to control costs, for use in legal actions, in response to surveys, or for use in research studies. Cancer registrars compile, maintain, and review records of cancer patients to provide information to physicians and for use in research studies.

Medical records and health information technicians' duties vary with the size of the facility. In large to medium-sized facilities, technicians may specialize in one aspect of health information, or supervise health information clerks and transcriptionists while a medical records and health information administrator manages the department. . . . In small facilities,

a credentialed medical records and health information technician sometimes manages the department.

The beneficiary's duties relating to patient records are encompassed within the above description of a medical records and health information technician. The *Handbook* describes "a credentialed medical records and health information technician" as managing a [medical records] department in a small facility. The petitioner is a small facility with nine employees. Managing a small facility would include the beneficiary's duty to plan, evaluate, and oversee medical records of homecare patients; formulate policies and procedures regarding content, processing, and confidentiality; develop policies and procedures relating to dealing with medical groups; respond to requests for release of patient records in accordance with rules and regulations; and direct the administration of medical records consistent with the standards of accrediting and regulatory agencies and requirements of healthcare systems. Technicians are also described in the *Handbook* as using "computer programs to tabulate and analyze data to help improve patient care, to control costs, for use in legal actions, in response to surveys, or for use in research studies." This relates to the beneficiary's duties of completing surveys of medical records requesting statistics and data related to medical records, and analyzing patient data for reimbursement, quality of patient care, risk management, and utilization of management. The duties to oversee the administration of fiscal operations and establish rates for healthcare services are not elaborated on by the petitioner; the AAO cannot determine whether they relate to the duties of a medical records and health information technician.

The *Handbook* indicates that the occupations of head nurse, nurse supervisor, and medical records and health information technicians do not require a bachelor's degree in a specific specialty. For a head nurse or nurse supervisor position, the *Handbook* states "students must graduate from an approved nursing program and pass a national licensing examination in order to obtain a nursing license." The *Handbook* relays that:

There are three major educational paths to registered nursing: a bachelor's of science degree in nursing (BSN), an associate degree in Nursing (ADN), and a diploma.

For the occupation of medical records and health information technicians, the *Handbook* reports:

Medical records and health information technicians entering the field usually have an associate degree from a community or junior college. . . .

The *Handbook* continues:

Hospitals sometimes advance promising health information clerks to jobs as medical records and health information technicians, although this practice may be less common in the future. Advancement usually requires 2 to 4 years of job experience and completion of a hospital's in-house training program.

. . .

Experienced medical records and health information technicians usually advance in one of two ways—by specializing or managing. . . .

In large medical records and health information departments, experienced technicians may advance to section supervisor, overseeing the work of the coding, correspondence, or discharge sections, for example. Senior technicians with RHIT credentials may become director or assistant director of a medical records and health information department in a small facility. However, in larger institutions, the director is usually an administrator, with a bachelor's degree in medical records and health information administration.

The excerpts from the *Handbook* set forth above indicate that a bachelor's degree in a specific specialty is not required for a medical records and health information technician position, and that a senior technician with Registered Health Information Technicians (RHIT) credentials may become director or assistant director of a medical records and health information department in a small facility. Based on this information, the proposed position, which resembles that of a medical records and health information technician in a small facility, would not require a bachelor's degree in a specific specialty. Accordingly, the petitioner fails to 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.

No evidence in the record establishes that a specific degree requirement is common to the industry in parallel positions among similar organizations or shows that the proffered position is so complex or unique that it can be performed only by an individual with a degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Again, the *Handbook* reveals that the duties of the proposed position are an amalgam of those of a head nurse or nurse supervisor and a medical records and health information technician, and that these positions do not require a bachelor's degree in a specific specialty.

No evidence in the record establishes 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. Because the *Handbook* reveals that the duties of the proposed position are a combination of those of a head nurse or nurse supervisor and a medical records and health information technician, and that these positions do not require a bachelor's degree in a specific specialty, 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.

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