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U.S. Citizenship  
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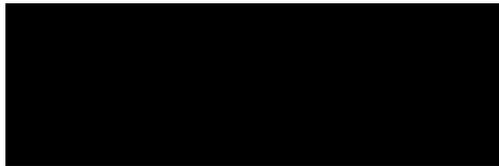


FILE: WAC 02 236 51157 Office: CALIFORNIA SERVICE CENTER Date: MAR 15 2005

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director 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 care business that seeks to employ the beneficiary as a medical records/facility administrator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional evidence related to the beneficiary's qualifications.

The AAO does not agree with the director's finding that the proffered position is a specialty occupation.

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/facility administrator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 14, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. The proposed duties are described in the petitioner's June 14, 2002 letter as follows:

- Plans, develops, manage[s], and administers health information system for the entire health care facilities [sic];
- Ensures that standards of accreditation and government regulations and requirements are met and complied with and facility operations are in compliance with State, Federal and County regulations and statutes. Assist the Chief Facility Administrator in ensuring that facility operations are in compliance with above;
- Develops reports to [sic] State and County government offices in compliance with the reporting procedures;
- Maintains computerized records of residents, drug therapies[,] etc. Develops and implements policies and procedures for documenting, storing, and retrieving facility information including but not limited to all patients/consumers and for processing medical-legal documents;
- Monitors, coordinates medical reports and records of consumers/residents;
- Prepare[s] and analyzes medical documents of consumers/residents including but not limited to updates and progresses [sic] of their developmental disabilities and behavioral status;
- In charge of development and implementation of computer software for computerized health information system;
- Coordinates medical care evaluation with medical staff including but not limited to psychologist, medical doctors, pharmacists, psychiatrists, etc. [sic] and develops guidelines and procedures for dissemination of said evaluations to consumers[,] residents and staff;
- Conducts instructional programs for direct care staff to comply with continuing Education requirements. Coordinates in[-]service training of direct care staff;
- Provides and maintains medical information and process them [sic] for dissemination to Chief Facility Administrator, medical providers, relatives, counselors and licensing personnel; and
- Analyzes consumers/residents data for [REDACTED] State of California Department of Social Services and determines recommendations regarding changes and proposed actions on facility planning, utilization management, research risk management and quality of consumers/patients care to Chief Facility Administrator.

The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in medical technology or other health-related field.

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 turns first 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; 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 Department of Labor's *Occupational Outlook Handbook (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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. In this case, the petitioner is a home health care business with 20 employees, including a "chief facility administrator," the author of the petitioner's June 14, 2002 letter. As such, it appears that the proffered position is primarily that of a medical records and health information technician. A review of the Medical Records and Health Information Technicians job description in the *Handbook*, 2004-2005 edition, finds that a credentialed medical records and health information technician sometimes manages the health information department in small facilities. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a medical records and health information technician job.

The record does not include any evidence regarding parallel positions in the petitioner's industry. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As the record does not contain any evidence of the petitioner's past hiring practices, the petitioner, therefore, has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

The director found that the beneficiary was not qualified to perform the duties of the proffered position because she does not hold a baccalaureate degree in a related area. As stated previously, no evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a medical records and health information technician job. In this case, the record contains an evaluation from a company that specializes in evaluating academic credentials indicating that the beneficiary possesses the equivalent of a bachelor's degree in medical technology from an accredited U.S. college or university. As such, the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position. The petition may not be approved, however, because the proffered position is not 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.