



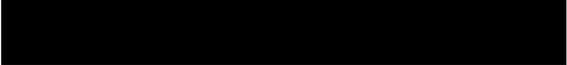
U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY



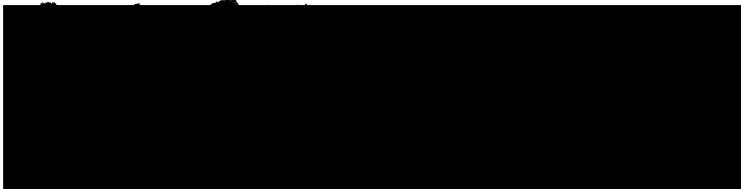
D2

FILE: WAC 02 265 54008 Office: CALIFORNIA SERVICE CENTER Date: **NOV 02 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, 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 facility providing intermediate and skilled nursing care for developmentally disabled adults, with 17 employees. It seeks to employ the beneficiary as a medical records administrator 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 he determined the record did not establish the proffered position 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) the petitioner's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and previously submitted 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 must examine the ultimate employment of the alien. *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 duties of the position actually require 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 medical records administrator. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's August 13, 2002 letter of support; and its April 15, 2003 response to the director's request for evidence.

In its letter of support, the petitioner provided a general description of the duties of its proffered position, restating these duties in its response to the director's request for evidence. As described by the petitioner, the proffered position would require the beneficiary to:

- Plan, develop, and administer the facility's health information system, consistent with the standards of regulating agencies and the requirements of the health care system (25 percent of the beneficiary's time);
- Develop and implement policies and procedures for documenting, storing, and retrieving information, and for processing medical-legal documents, insurance data, and correspondence requests in conformance with federal, state and local statutes (25 percent of the beneficiary's time);
- Develop, design and implement computerized health information systems (25 percent of the beneficiary's time); and
- Conduct analysis of patient data for reimbursement, facilities planning, quality of patient care, risk management, utilization management and research (25 percent of the beneficiary's time).

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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In his denial, the director, referencing the discussion of medical and health service managers in the 2002-2003 edition of the DOL *Handbook*, found the duties of the proffered position to be those of a medical or health services manager, but not to require the beneficiary to hold the minimum of a baccalaureate degree. The AAO does not agree. Based on its own reading of the *Handbook* (2004-2005 edition) and the petitioner’s discussion of the beneficiary’s duties, the AAO concludes that the proffered position is not that of a medical records administrator, but a medical records or health information technician.

The *Handbook*, at pages 55-56, states the following with regard to medical and health services managers, under which it includes the profession of medical records administrator:

Healthcare is a business and, like every other business, it needs good management to keep it running smoothly. The occupation, medical and health services manager, encompasses all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system.

...

Clinical managers have more specific responsibilities than do generalists, and have training or experience in a specific clinical area. For example, directors of physical therapy are experienced physical therapists, and most health information and medical records administrators have a bachelor’s degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

...

Medical and health services managers must be familiar with management principles and practices

Although the petitioner has stated that the beneficiary would serve as a medical records administrator, it has not indicated that he would be required to assume the range of responsibilities typically shouldered by medical and health services managers, as described above. The petitioner has not described a position that would require the beneficiary to manage medical records personnel, develop administrative reports and budgets or to be familiar with management principles and practices. Instead, the beneficiary’s duties would focus exclusively on the development and administration of the petitioner’s medical records and health

information systems, work that appears more closely aligned to that performed by medical records and health information technicians, as described at page 323 of the *Handbook*:

Every time a patient receives healthcare, a record is maintained of the observations, medical or surgical interventions, and treatment outcomes

. . .

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.

. . .

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

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.

As the proffered position appears most closely aligned to the employment of medical records and health information technicians, the AAO withdraws the director's finding that its duties reflect the work of medical and health services managers. It now turns to the *Handbook's* discussion of the educational requirements imposed on those seeking entry-level employment as a medical records or health information technician. As indicated by the *Handbook*, page 323, medical records and health information technicians entering the field:

[u]sually have an associate degree from a community or junior college

Hospitals sometimes advance promising health information clerks to jobs as medical records and health information technicians Advancement usually requires 2 to 4 years of job experience and completion of a hospital's in-house training program.

Most employers prefer to hire Registered Health Information Technicians (RHIT), who must pass a written examination offered by the American Health Information Management Association (AHIMA). To take the examination, a person must graduate from a 2-year

associate degree program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) of the American Medical Association

As the *Handbook* does not indicate that employers normally impose a degree requirement on those seeking work as medical records or health information technicians, the AAO finds that the petitioner cannot establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

In reaching its decision, the AAO has noted counsel's resubmission, on appeal, of material from the *Dictionary of Occupational Titles (DOT)*, which discusses medical records administrators. The *DOT* assigns the occupation of medical records administrator a Specific Vocational Preparation (SVP) rating of 8, i.e., requiring more than four years and as many as ten years of preparation. However, 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 education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

To establish its proffered position as a specialty occupation under the second criterion, a petitioner must prove either that its specific degree requirement is common to its industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty. In the instant case, the petitioner has submitted no evidence that responds to either of these requirements and, therefore, the proffered position cannot be established as a specialty occupation on the basis of industry practice or because its complexity or unique nature sets it apart from similar non-degree employment.

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

To determine a petitioner's ability to meet the third criterion, CIS often reviews the position's employment history, including the names and dates of employment of those employees with degrees who previously held the position, as well as the petitioner's hiring practices with regard to similar positions. Again, however, the record contains no evidence with regard to the petitioner's hiring practices and, therefore, the petitioner cannot establish the proffered position as a specialty occupation on this basis.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. On appeal, counsel contends that the

duties of the proffered position meet the specialized and complex threshold set by the criterion, as they would require the beneficiary to perform complex assignments, to work autonomously and to exercise independent judgment critical to the functions of the position. The AAO will, however, discount counsel's assertions. It finds the petitioner's general description of the duties of the proffered position to offer no basis for counsel's statements regarding its complexity or specialization. As discussed by the petitioner, these duties do not reflect a higher degree of knowledge and skill than that normally required of medical records and health information technicians who may obtain employment without obtaining the minimum of a baccalaureate degree or its equivalent. Without supporting documentation, the assertions of counsel will not satisfy the petitioner's burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Although the AAO notes that the director's denial refers to a letter submitted by counsel to establish the specialized and complex nature of the proffered position's duties, it has found no such letter in the record before it. As the record contains no evidence to indicate that the duties of the proffered position are unusually complex or specialized, the petitioner cannot establish the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as 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.