

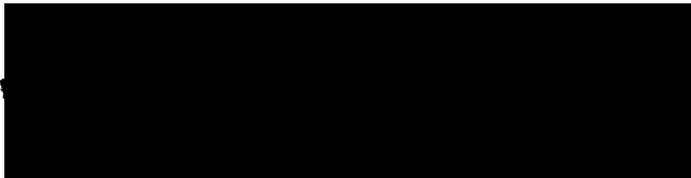
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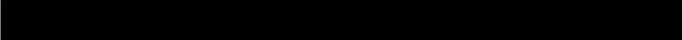
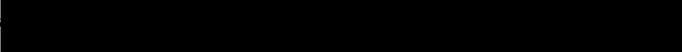
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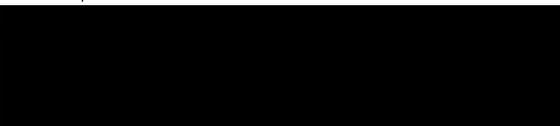
FILE: WAC 04 103 50265 Office: CALIFORNIA SERVICE CENTER

Date: OCT 04 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 diagnostics laboratory. In order to employ the beneficiary in a position which it entitles Medical Records Administrator, the petitioner filed this petition to classify the position as an H-1B nonimmigrant worker in a specialty occupation, 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).

The director determined that the proffered position is that of a medical records technician as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which Citizenship and Information Services (CIS) recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations. The director denied the petition on the basis that the petitioner had failed to establish that the proffered position meets the definition of a specialty occupation set forth in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The director's decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's denial letter; and (3) the Form I-290B, and counsel's brief in the form of an eight-page statement that is attached to the Form I-290B.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation:

which [1] 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 [2] 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. (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

According to the Form I-129, the petitioner has five employees. The brochure submitted into the record includes the following information. The petitioner is a full-service pathology laboratory that was founded in 2001 in order to provide physicians with laboratory results and consultation in surgical pathology, cytopathology, and forensic pathology. In 2003, the laboratory expanded its clinical pathology testing programs to include comprehensive clinical chemistry, hematology, urinalysis, drug screening, in-house immunohistochemistry, special stains, and tissue processing. The petitioner “has the capability of serving a wide range of physicians with a wide range of available tests and rapid turn-around times,” and the petitioner’s pathology staff are “readily available for quick consultation with client physicians through the laboratory client services.”

In its February 23, 2004 letter of support that was filed with the Form I-129 (Petition for Nonimmigrant Worker), the petitioner presents the following duties in support of its assertion that the proffered position is “highly technical in nature as they involve knowledge in medical information that only persons with baccalaureate degrees in medically allied courses can perform”:

The tasks include planning, developing, and administering health information standards of accrediting and regulating agencies and requirements of our medical diagnostics and laboratory systems.

Also, [the beneficiary] will be tasked to develop and implement policies and procedures for documenting, storing, and retrieving information and for processing medico-legal documents, insurance data, and correspondence requests, in conformance with federal, state, and local statutes.

In addition, it would also be his duty to: supervise staff, either directly or through subordinates, in the preparation and analysis of medical documents; participate in the development and design of computer software for [a] computerized diagnostics and laboratory information system; coordinate medical care evaluation with medical staff and develop criteria and methods for such evaluation; develop in-service educational materials and conduct instructional programs for laboratory and diagnostic and diagnostics personnel; and analyze data for reimbursement, facility planning, quality of procedures, risk management, utilization management, and research.

On appeal, counsel submits a brief that contends that the evidence of record establishes that the proffered position is that of a medical records administrator - not a medical records technician - and that the position qualifies as a specialty occupation under criteria 1 and 4 of 8 C.F.R. § 214.2(h)(4)(iii)(A). As discussed below, counsel is incorrect.

The petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) by establishing that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties.

The petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) by establishing that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties.

CIS recognizes the Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. The proposed duties are described in exclusively generalized and generic terms. Consequently, the AAO is only able to reasonably conclude that some of the duties are generally encompassed by a combination of the administrative assistant and medical and records/health care information technician occupational categories as discussed at pages 469-472 and 323-324, respectively, of the 2004-2005 edition of the *Handbook*. The *Handbook* indicates that neither of these occupational categories would normally require a bachelor's degree or higher in a specific specialty.

No specific information is provided about the analysis and preparation that would be involved in the beneficiary's medical document preparation and analysis, or about the nature of the beneficiary's participation in the design and development of software for the petitioner. The petitioner does not describe the content of

the medical care evaluation in which the beneficiary would engage, the educational material that the beneficiary would develop, or the instructional programs that he would provide. Likewise the petitioner provides no information about the data that the beneficiary would analyze for “reimbursement, facility planning, quality of procedures, risk management, utilization management and research.” The petitioner employs 5 people in a medical diagnostics laboratory. Two of these persons, the medical director and co-director, appear to be pathologists. No information is presented about the other three employees, or the staff that the beneficiary will supervise “either directly or through subordinates,” or with whom the beneficiary will coordinate medical care evaluation. From the petitioner’s statements the AAO can reasonably deduce that the position will require some medical knowledge. However, there is no basis in the record for the AAO to conclude that the position would require more than the associate’s degree level of medical knowledge that the *Handbook* reports as the usual entry-level educational requirement for medical records and health information technicians.

As the evidence of record does not establish that the proffered position is one with a normal minimum entry requirement of a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The evidence of record does not support counsel’s second contention, namely, that the petitioner has satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) by showing that the duties are so specialized and complex that their performance requires knowledge usually associated with at least a baccalaureate degree in a specific specialty. Such complexity is not evident in the duties as described in the record, and the petitioner has presented no independent evidence on this issue.

The record does not substantiate counsel’s assertions that the petitioner has satisfied 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (4). 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 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).

The AAO also finds that the evidence of record does not satisfy any of the specialty occupation criteria not relied upon by counsel.

The petitioner has not presented evidence that satisfies the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is for a position with a requirement for at least a bachelor’s degree in a specific specialty that is common to the petitioner’s industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner. The evidence of record does not establish that this particular position is so complex or unique that it can be performed only by an individual with a degree, so as to satisfy the second alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner has not presented any evidence to establish that the proffered position qualifies as a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), that is, by virtue of an established history of the

petitioner's recruiting and requiring for this position only persons with at least a bachelor's degree in a specific specialty.

In addition to the evidentiary deficiencies discussed above, the AAO also notes inconsistent material information in the record that casts doubt upon the accuracy of the petition. The petitioner's brochure and letter of support indicate that the petitioner is involved exclusively in laboratory testing and consultant service for physicians. Yet, the letter of support lists medical care evaluation among the duties, and the brief asserts that part of the specialty occupation rationale resides in a requirement that the beneficiary ensure proper treatment plans and the proper administration of medications (brief, at page 4). The record contains no explanation of how the laboratory would be involved in evaluating persons' medical care, planning their treatment, or administering medications. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The above noted material inconsistency is not resolved by any part of the record of proceeding.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

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