

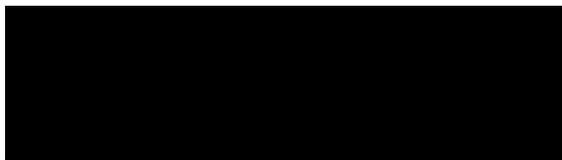
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**U.S. Citizenship  
and Immigration  
Services**

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FILE: LIN 04 188 50264 Office: NEBRASKA SERVICE CENTER Date: **AUG 18 2006**

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 medical practice that seeks to employ the beneficiary as a part-time health services coordinator. 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence including photos of the petitioner's business premises and new Internet job postings.

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 part-time health services coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 8, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform the following duties:

- Manage, coordinate and supervise the handling of all patient medical requirements, records and service collaterals to improve quality of patient service;
- Screen and analyze medical exam results to provide a summary report for internal use;
- Coordinate the administration of required medical examinations and procedures and the timely submission of reports thereof;
- To develop and implement an effective communication system between hospitals, insurance companies and other health services providers;
- Responsible for all service collaterals including affiliations with hospitals and accreditation for "In-Network" category for particular insurance providers;
- Review and analysis of service agreements and arrangements with hospitals and insurance providers;
- Responsible for coordinating with proper parties for legal compliance on medical practice; [and]
- Establish coordinating system to provide the medical practitioner with directions on latest medical breakthroughs, equipments and procedures.

The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in nursing, medicine, or business administration with a medical or registry background.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so specialized and complex as to require a bachelor's degree. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position, which is that of a health services coordinator, is clearly a specialty occupation. Counsel states further that a review of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* finds that a baccalaureate degree is the minimum requirement for a medical and health services manager position. Counsel also states that another physician recently joined the petitioner's practice, thereby demonstrating an urgent need for a health services coordinator. Counsel states that the proposed duties, which entail reviewing and analyzing hospital and service agreements, monitoring the needs and training of medical personnel, and preparing a constructive summary after screening and analyzing medical reports, are so complex as to require theoretical and practical knowledge of complex medical terms, procedures, and hospital policies. Counsel submits job postings and photos of the petitioner's business premises as supporting documentation.

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 *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. The AAO does not concur with counsel that the proffered position is similar to that of a medical and health services manager. The proposed job duties described at the time of filing do not entail the level of responsibility of that occupation. In this case, information on the petition reflects that the petitioner was established in 1974, has two employees and a gross annual income of \$385,000. Although counsel asserts on appeal that the business is expanding and another physician recently joined the petitioner, CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Further, the record contains no evidence in support of these claims, such as quarterly wage reports and federal income tax returns. 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 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). Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). A review of the Office and Administrative Support Worker Supervisors and Managers in the *Handbook*, 2006-2007 edition, finds that the proposed duties parallel the responsibilities of an office and administrative support worker supervisor or manager. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for this job.

Regarding parallel positions in the petitioner's industry, counsel submits three Internet job postings on appeal. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The advertisements are for a care team manager, a program coordinator, and a case coordinator for a national provider of home health care services, a mental health and substance abuse services provider with nine sites in Los Angeles County, and a national provider of disability medical evaluations, respectively. The petitioner has not demonstrated that the nature of the proffered position is as complex as that of the advertised positions. Thus, the advertisements are not probative.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position.

Further, the record of proceeding contains no information about the proffered position that distinguishes it as unique from or more complex than the general occupational category of an office and administrative support worker supervisor or manager, for which the *Handbook* does not report a normal requirement for at least a bachelor's degree, or the equivalent, in a specific specialty.

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 petitioner indicates that the proffered position is a new position, the petitioner, therefore, has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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. As described, those duties appear no more specialized and complex than those general duties which the *Handbook* attributes to the general occupational category of office and administrative support worker supervisors and managers, for which the *Handbook* does not indicate a normal requirement for usual association with at least a bachelor's degree 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. 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.