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U.S. Citizenship  
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Services

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FILE: WAC 05 149 51097 Office: CALIFORNIA SERVICE CENTER Date: DEC 04 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:

SELF-REPRESENTED

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 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.

In order to employ him as a medical translator, the petitioner 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, finding that the evidence of record did not satisfy any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) for qualifying a position as a specialty occupation.

On appeal, the petitioner asserts that the proffered position qualifies as a specialty occupation. The petitioner submits a letter accompanied by (1) a memorandum in which a cardiologist attests that he observed the beneficiary, whose "objective was to prove by experience his knowledge in the field of cardiology"; (2) an Internet advertisement for an interpreter position at Barnes Jewish Hospital, described in the advertisement as "the largest hospital in Missouri"; and (3) an Internet document, "Medical Terms – Medical Abbreviations – Medical Dictionary," discussing a firm's Spanish medical translators.

Form I-129 (Petition for Nonimmigrant Worker) identifies the petitioner as a medical center with two employees and a gross annual income of \$500,000. The Form I-129 Supplement states that the medical translator will translate procedures, prescriptions, medications' side effects, and therapy for Farsi-speaking patients; make appointments; and assist "Doctor, Technician" in translation.

The petitioner's two-page document "Evidence Pertaining to the Proffered Position (EPPP)" which was submitted in reply to the RFE, lists these duties as comprising the proffered position: assistance with patient services and file management; translations for Farsi-speaking patients that would include but not be limited to medical exams, tests, surgery procedures, and medications; coordination and scheduling of tests of Farsi-speaking patients; "walking patients through" exams and tests "not limited to but including" evaluation of coronary and cardiac problems; stress echo tests; treadmill tests; stress tests; cardiac-related nuclear tests; angiograms; pacemaker use; and regular heart monitoring.

According to the EPPP document, the beneficiary will also assist in these areas of the petitioner's practice: management of patient services; scheduling patients' tests and visits to the petitioner; "translation and expiation of" medications and usage and the purpose of drugs, tests, and procedures.

The EPPP document also states that the beneficiary will work 20 hours per week and divide his time as follows: 80% "with the patients and running tests;" 5% securing patient appointments; 15% "with the Doctor for overall review and future tasks on files."

The director's decision to deny the petition was correct. The AAO bases its determination 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 request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the

letter and other documents submitted on appeal. As will be discussed below, the basis of the AAO's decision to uphold the director's denial of the petition is that the evidence of record does not establish that, at the time the petition was filed, the petitioner would employ the beneficiary in the Farsi interpretation and translation services that are the core of the proffered position.

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 evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1), which provides for specialty occupation qualification of those positions whose normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position's duties.

To the extent that they are described in the record, the proffered position and the duties that comprise it are most closely related to the medical interpreter and translator occupation as discussed in the section on Interpreters and Translators in the 2006-2007 edition of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which the AAO recognizes as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The *Handbook* indicates that there is no specific degree that is normally required or usually associated with this occupational category, and the record

of proceeding does not contain evidence that refutes the *Handbook's* information. Accordingly, the petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered 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.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As discussed above, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry. The petitioner's submissions from the Internet are relevant, but not persuasive. There is no evidence of record to establish that these submissions accurately represent a common industry recruiting and hiring standard. These Internet advertisements do not demonstrate that the advertising employers all require a degree in a specific specialty. The advertised jobs include positions which the evidence does not establish as parallel to the one here proffered. Further, the advertisers include organizations that the evidence does not establish as similar to the petitioner, a medical office with two employees.

Next, the hiring-practice criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3) is not a factor in this proceeding, as the record establishes that the proffered position is being offered for the first time.

The AAO finds that the proffered position does not qualify under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) (that is, as one that is so complex or unique that it can be performed only by an individual with at least a baccalaureate degree in medicine or a related specialty) or under 8 C.F.R. § 214.2(h)(iii)(A)(4) (that is, as with specific duties so specialized and complex as to require knowledge usually associated with the attainment of a baccalaureate or higher degree in medicine or a related specialty). The record fails to establish that the petitioner has a Farsi speaking patient base, or that it has a business plan to acquire such patients. 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)).

The "Position" section of the petitioner's EPPP document states, in pertinent part:

This is a new service that the [petitioner] is providing for their practice to attract Farsi Speaking Patients. The medical center is trying to increase the number of patients and their customer base by targeting the growing Farsi Speaking patients. . . .

The record does not contain documentation establishing that, at the time that the petition was filed, the petitioner had a Farsi patient base which would require the services of a Farsi medical interpreter and translator whose chief tasks, as described in the petition, would be English to Farsi/Farsi to English translation and interpretation for Farsi patients. 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 based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). As the record does not establish that the petitioner will employ the beneficiary as a medical translator for Farsi speaking patients, the petitioner has failed to satisfy the second prong of the second criterion or the fourth criterion. The record does not establish that the duties will be unique or complex with respect to the petitioner's existing patient base.

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.