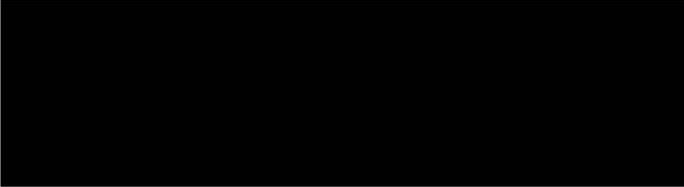




U.S. Citizenship
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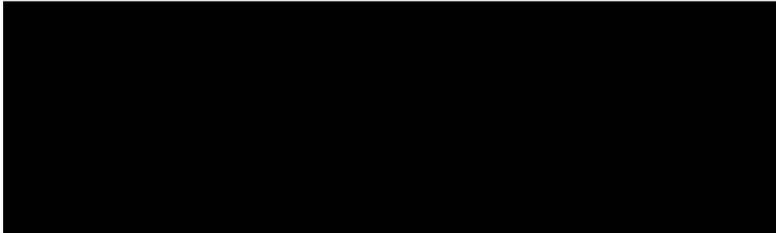
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FILE: LIN 04 209 53153 Office: NEBRASKA SERVICE CENTER Date: **JUL 21 2006**

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.

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.

The petitioner is a long-term care facility that seeks to employ the beneficiary as a reimbursement specialist. The petitioner, therefore, 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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) the 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) the 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 reimbursement specialist. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would have responsibility for provider reimbursement: contacting benefits providers to gather policy benefits and/or limitations and ensure that the service provided is reimbursable. The beneficiary will facilitate communication between the service unit and the billing department for acceptance or denial of new clients; provide detailed billing instructions to appropriate service unit and billing staff upon determining reimbursement requirements for clients. The response to the request for evidence elaborated on the proposed duties. The petitioner seeks to employ the beneficiary who holds the educational equivalent of a bachelor's degree in accounting.

The director stated that the proposed position does not resemble a financial manager as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director stated that the petitioner's organizational chart reveals that it employs a controller, which is considered a financial manager. The director found the submitted job postings unconvincing in establishing the offered position as a specialty occupation. The director concluded that the petitioner satisfied none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proposed position is similar to an auditor, which the *Handbook* indicates requires a baccalaureate degree in accounting or a related field. The America's Career InfoNet, counsel maintains, indicates that an auditor requires a bachelor's degree. According to counsel, the offered position requires knowledge of regulatory, coding, and billing compliance; and involves preparation of custom revenue reports that the administrator will use to prevent mismanagement, waste, or fraud. Counsel states that the beneficiary will ensure records are accurate and controls are adequate to protect against waste and fraud, and will recommend controls for the computer billing system. The beneficiary must have knowledge of economic and accounting principles and practices, financial markets, banking, and the analysis and reporting of financial data, counsel contends. Counsel discusses the relevance of the *Dictionary of Occupational Titles* (DOT).

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 first considers 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 2006-2007 edition of 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Counsel asserts, in part, that the court in *Young China Daily vs. Chappell*, 742 F. Supp. 552, 553 (N.D. Cal. 1989) relied on the *DOT's* information regarding job duties and requirements. However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. A specific vocational preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. 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.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of occupations. Counsel's assertion that the offered position is similar to an auditor is not convincing. The AAO finds that the *Handbook* reveals that the offered position parallels a medical records and health information technician, which is described in the *Handbook* as follows:

Every time a patient receives health care, a record is maintained of the observations, medical or surgical interventions, and treatment outcomes. This record includes information that the patient provides concerning his or her symptoms and medical history, the results of examinations, reports of x rays and laboratory tests, diagnoses, and treatment plans. Medical records and health information technicians organize and evaluate these records for completeness and accuracy.

Technicians assemble patients' health information. They make sure that patients' initial medical charts are complete, that all forms are completed and properly identified and signed, and that all necessary information is in the computer. They regularly communicate with physicians and other health care professionals to clarify diagnoses or to obtain additional information.

Some medical records and health information technicians specialize in coding patients' medical information for insurance purposes. Technicians who specialize in coding are called *health information coders, medical record coders, coder/abstractors, or coding specialists*. These technicians assign a code to each diagnosis and procedure. They consult classification manuals and also rely on their knowledge of disease processes. Technicians then use computer software to assign the patient to one of several hundred "diagnosis-related groups,"

or DRGs. The DRG determines the amount for which the hospital will be reimbursed if the patient is covered by Medicare or other insurance programs using the DRG system. In addition to the DRG system, coders use other coding systems, such as those geared toward ambulatory settings or long-term care.

Some technicians also use computer programs to tabulate and analyze data to improve patient care, control costs, provide documentation for use in legal actions, respond to surveys, or use in research studies. For example, *cancer* (or tumor) *registrars* maintain facility, regional, and national databases of cancer patients. Registrars review patient records and pathology reports, assign codes for the diagnosis and treatment of different cancers and selected benign tumors. Registrars conduct annual followups on all patients in the registry to track their treatment, survival, and recovery. Physicians and public health organizations then use this information to calculate survivor rates and success rates of various types of treatment, locate geographic areas with high incidences of certain cancers, and identify potential participants for clinical drug trials. Cancer registry data also is used by public health officials to target areas for the allocation of resources to provide intervention and screening.

The beneficiary's duties are encompassed within those of a medical records and health information technician. The February 21, 2005 letter indicates that the beneficiary will serve as a resource for regulatory, coding, billing compliance; present changes in regulations and assist physicians and staff in complying with federal, state, and local regulations; perform orientation regarding regulations; review and report on physician compliance with coding and documentation guidelines; monitor reports on service lines; provide custom revenue reports; create and maintain pricing; and maintain the Medicare Waiver Form for clinical areas. These duties correspond to those of medical records and health information technicians, as they organize and evaluate these medical records for completeness and accuracy, code patients' medical information for insurance purposes, determine patients' insurance and Medicare coverage, and improve patient care and control costs.

The *Handbook* indicates that a medical records and health information technician is not required to possess a bachelor's degree in a specific specialty. It states:

Medical records and health information technicians entering the field usually have an associate degree from a community or junior college. In addition to general education, coursework includes medical terminology, anatomy and physiology, legal aspects of health information, coding and abstraction of data, statistics, database management, quality improvement methods, and computer science. Applicants can improve their chances of admission into a program by taking biology, chemistry, health, and computer science courses in high school.

The AAO's conclusion, based on the evidence of record and the *Handbook's* information, is that the petitioner fails to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is that a baccalaureate or

higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to job postings. The postings are not persuasive, however. Most of the companies differ in nature from the petitioner, a small long-term care facility, or their nature is not revealed in the posting. Jackson-Madison County General Hospital is a hospital; Scripps is a non-profit community-based health care delivery network with 10,000 employees; University of Pittsburgh Medical Center is a large integrated health care delivery system with 37,000 employees; and BlueCross BlueShield of Illinois is a large insurance company. University Health System and the Omaha Medical Facility (job reference: 04-65695) are not described in their postings. The Woodhaven Healthcare Services posting reveals that this company does not require a bachelor's degree. It is for these reasons that the job postings fail to establish that a specific degree requirement is common to the industry in parallel positions among organizations similar to the petitioner.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. Based on the description of the proposed duties, the AAO finds that the duties mirror those of a medical records and health information technician, which is an occupation that the *Handbook* reveals does not require a baccalaureate degree. No evidence in the record indicates that the offered position has such complexity or uniqueness as to require a baccalaureate degree in a specific specialty. Consequently, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. In light of the proposed duties, the AAO finds the offered position mirrors that of a medical records and health information technician, which is an occupation that the *Handbook* reveals does not require a baccalaureate degree. No evidence in the record indicates that the nature of the proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Accordingly, the petitioner fails to establish the criterion at 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 on this ground.

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.

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