

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

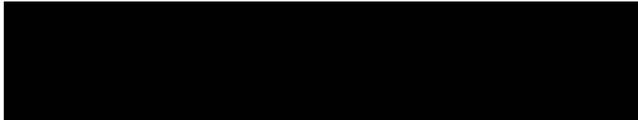
PUBLIC COPY

D2



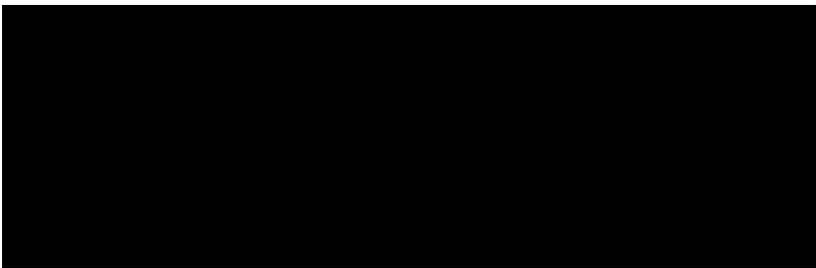
FILE: WAC 04 249 52191 Office: CALIFORNIA SERVICE CENTER Date: MAR 22 2006

IN RE: Petitioner:
Beneficiary:



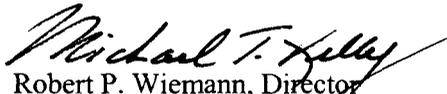
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

for 
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 The director's decision is withdrawn and the petition remanded for entry of a new decision.

The petitioner is a medical and service company that seeks to employ the beneficiary as a medical research assistant. 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 and additional and previously submitted evidence.

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 medical research assistant. 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 perform duties that entail reviewing medical journals regarding health issues and developments that may be relevant to patients; eliciting detailed histories from patients, finding the details of the patients' past illness history and current symptoms; under the physician's request, conducting radiologic tests; reviewing patients' charts and researching medical literature and then discussing with physicians the possible diagnosis for unusual cases and suggesting possible tests and procedures that may be relevant to the diagnosis; and discussing the possible diagnosis with the physician to ensure correct diagnostic needs for each patient. The petitioner requires a baccalaureate degree for the proposed position.

In denying the petition, the director stated that the proposed position resembles a medical assistant and radiographer as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that those occupations do not require a bachelor's degree in a specific specialty. The director stated that although the *Handbook* reveals that a physician assistant takes medical histories of patients, the majority of the proposed duties do not resemble those of a physician assistant. A medical research assistant, the director stated, is normally associated with a medical scientist that works in a research and development field. The director found that the record did not show the petitioner as engaging in clinical studies or laboratory research. According to the director, the proposed duties are generic in nature, providing no detail as to the unique, complex, or specialized nature of the beneficiary's position.

On appeal, counsel states that the director arbitrarily and erroneously classified the proposed position as that of a medical assistant. Counsel states that the petitioner is the largest medical services provider in its field, primarily targeting the Chinese community in southern California. Counsel asserts that by requiring a bachelor's degree (or its equivalent) the petitioner minimizes medical malpractice lawsuits. Counsel states that CIS previously approved an H-1B petition filed by the petitioner on behalf of the beneficiary for the same position. According to counsel, the petitioner recently hired a person holding a bachelor's degree in radiation sciences to occupy a medical research assistant position. Counsel maintains that the proposed duties are specialized, complex, and unique, requiring a bachelor's degree or its equivalent. Counsel asserts that the beneficiary is qualified for the proposed position and that CIS previously reached this conclusion.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO finds that the petitioner satisfied the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4): that 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. The AAO finds that the proposed position is comprised of the duties of a radiologic technologist and technician and a physician assistant (PA), as those

occupations are depicted in the *Handbook*. The *Handbook's* information relating to a radiologic technologist and technician is as follows:

Radiologic technologists and technicians take x rays and administer nonradioactive materials into patients' bloodstreams for diagnostic purposes. Some specialize in diagnostic imaging technologies; such as computerized tomography (CT) and magnetic resonance imaging (MRI).

In addition to radiologic technologists and technicians, others who conduct diagnostic imaging procedures include cardiovascular technologists and technicians, diagnostic medical sonographers, and nuclear medicine technologists. (Each is discussed elsewhere in the *Handbook*.)

Radiologic technologists and technicians, also referred to as *radiographers*, produce x-ray films (radiographs) of parts of the human body for use in diagnosing medical problems. They prepare patients for radiologic examinations by explaining the procedure, removing articles such as jewelry, through which x rays cannot pass, and positioning patients so that the parts of the body can be appropriately radiographed. To prevent unnecessary exposure to radiation, these workers surround the exposed area with radiation protection devices, such as lead shields, or limit the size of the x-ray beam. Radiographers position radiographic equipment at the correct angle and height over the appropriate area of a patient's body. Using instruments similar to a measuring tape, they may measure the thickness of the section to be radiographed and set controls on the x-ray machine to produce radiographs of the appropriate density, detail, and contrast. They place the x-ray film under the part of the patient's body to be examined and make the exposure. They then remove the film and develop it.

Experienced radiographers may perform more complex imaging procedures. For fluoroscopies, radiographers prepare a solution of contrast medium for the patient to drink, allowing the radiologist (a physician who interprets radiographs) to see soft tissues in the body. Some radiographers, called *CT technologists*, operate CT scanners to produce cross-sectional images of patients. Radiographers who operate machines that use strong magnets and radio waves, rather than radiation, to create an image are called *MRI technologists*. Radiologic technologists and technicians must follow physicians' orders precisely and conform to regulations concerning the use of radiation to protect themselves, their patients, and their coworkers from unnecessary exposure.

In addition to preparing patients and operating equipment, radiologic technologists and technicians keep patient records and adjust and maintain equipment. They also may prepare work schedules, evaluate purchases of equipment, or manage a radiology department.

According to the *Handbook*, a bachelor's degree is not required for radiologic technologists and technicians.

The AAO finds that the proposed duties corresponding to a PA involve eliciting detailed histories of patients, reviewing patient charts and researching medical literature, discussing with physicians to consider possible diagnosis for unusual cases, and suggesting possible tests and procedures that may be relevant to the diagnosis. The *Handbook* describes a PA as "working as members of the health care team, they take medical histories, examine and treat patients, order and interpret laboratory tests and x rays, and make diagnoses." According to the *Handbook*, all states require that PAs complete an accredited, formal education program and pass a national exam to obtain a license. The *Handbook* states:

PA programs usually last at least 2 years and are full time. Most programs are in schools of allied health, academic health centers, medical schools, or 4-year colleges; a few are in community colleges, the military, or hospitals. Many accredited PA programs have clinical teaching affiliations with medical schools.

In 2005, more than 135 education programs for physician assistants were accredited or provisionally accredited by the American Academy of Physician Assistants. More than 90 of these programs offered the option of a master's degree, and the rest offered either a bachelor's degree or an associate degree. Most applicants to PA educational programs already have a bachelor's degree.

Based on the *Handbook's* information and the submitted evidence, the AAO finds that the proposed position qualifies as a specialty occupation.¹

The AAO must now consider whether the beneficiary is qualified for the proposed position.

The record contains a letter from Loma Linda University, which is located in California. The letter states that the beneficiary was lacking one unit to complete her bachelor of science degree in radiation and that she "has completed that unit and will soon be receiving her diploma." The record shows that the beneficiary completed an associate in science degree from Loma Linda University; completed four years of undergraduate study at Pasadena City College in California towards the U.S. degree of associate in science with a major in applied liberal arts studies and the U.S. certificate in radiologic technology. The record reflects that the beneficiary was granted certification as a radiographer by The American Registry of Radiologic Technologists. The beneficiary completed three years of employment with the petitioner. No

¹ The AAO notes that CIS previously approved another petition that had been filed on behalf of the beneficiary by the petitioner. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). For this reason, the AAO cannot determine the specific grounds for which CIS granted the prior petition.

evidence contained in the record, however, demonstrates that the beneficiary has licensure to perform the duties of PA in California. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of a PA, and any other evidence the director may deem necessary. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361.

ORDER: The director's November 5, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.