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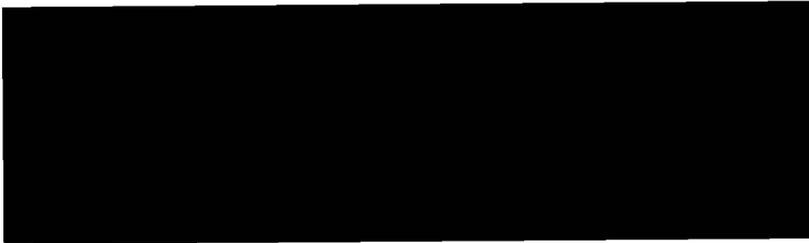
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FILE: EAC 04 126 53580 Office: VERMONT SERVICE CENTER Date: **MAR 28 2006**

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, 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 operates medical clinics. It seeks to employ the beneficiary as a health services administrator. 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 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 health services administrator in the [REDACTED] which is located in New Jersey. 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 directing the administration, application, and documentation of all medical and health maintenance services offered through the clinic; coordinating the work of outside specialty caregivers, nurses, and medical assistants; meeting with patients and explaining procedures and medical regimes; managing schedules for ultrasounds, hysterosalpingograms (HSGs) and sonohysterograms (SHGs); directing the pregnancy test program such as laboratory tests and blood work, and mammogram appointments and counseling; managing prenatal obstetrical and post-partum reunion classes; having responsibility for the administration of birth control and hormone replacement therapy programs; and discussing the medical, documentation, and insurance aspects of medical matters with patients. Under a medical doctor's oversight, the beneficiary will oversee the administration of specialty services of the obstetric and gynecology clinic, and answer questions about medical and non-medical aspects of care. The petitioner seeks to employ the beneficiary, who has the equivalent to a baccalaureate degree in health services administration.

In denying the petition, the director stated that the proposed position does not resemble a medical and health service manager as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and in the *Dictionary of Occupational Titles (DOT)*. The director found the proposed duties are those of a nurse practitioner who performs some recordkeeping. According to the director, the submitted evidence was insufficient to demonstrate that a former employee actually occupied a health services administrator position. The director found the record unpersuasive in establishing that the petitioner or its industry has a practice of requiring a baccalaureate degree for the offered position. The director found the beneficiary ineligible for an extension of status.

On appeal, counsel states that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past; and that CIS previously found the beneficiary qualifies for this kind of position. Counsel asserts that the director mischaracterized the proposed duties, and failed to properly consider the *Handbook's* information about medical and health services managers and the documentation pertaining to the former employee. According to counsel, Board of Immigration Appeal (BIA) and AAO decisions, the *Dictionary of Occupational Titles (DOT)*, and university programs convey that the proposed position requires a baccalaureate degree. Counsel maintains that the beneficiary is eligible for an extension of status.

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.

Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of

the supporting evidence submitted to the service center in the prior case. In the absence of all of the corroborating evidence contained in those records of proceeding, counsel's assertion is not sufficient to enable the AAO to determine whether the position offered here is parallel to the position that was found to be a specialty occupation. Furthermore, 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).

Counsel's reference to and assertions about the relevance of information from the *DOT* is not persuasive. Neither the *DOT's* specific vocational preparation (SVP) rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

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.

With respect to the proposed duties, counsel states on appeal that the beneficiary will be [d]irecting the records maintenance duties of the [m]edical [r]ecords [a]dministrator and [a]dministrative [a]ssistant, and will "administer the system for all medical records, in a bilingual format, consistent with standard medical practices in both the U.S. and Japan." However, these duties were not described in the petitioner's March 9, 2004 letter. The AAO notes that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO sets forth here the relevant *Handbook* text about the employment of medical and health services managers:

Health care is a business and, like every other business, it needs good management to keep it running smoothly. Medical and health services managers, also referred to as *health care executives* or *health care administrators*, plan, direct, coordinate, and supervise the delivery of health care. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help manage an entire facility or system.

Large facilities usually have several assistant administrators to aid the top administrator and to handle daily decisions. Assistant administrators may direct activities in clinical areas such as nursing, surgery, therapy, medical records, or health information. . . .

In smaller facilities, top administrators handle more of the details of daily operations. For example, many nursing home administrators manage personnel, finances, facility operations, and admissions and also have a larger role in resident care.

Clinical managers have training or experience in a specific clinical area and, accordingly, have more specific responsibilities than do generalists. For example, directors of physical therapy are experienced physical therapists, and most health information and medical record administrators have a bachelor's degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

Health information managers are responsible for the maintenance and security of all patient records. Recent regulations enacted by the Federal Government require that all health care providers maintain electronic patient records and that these records be secure. As a result, health information managers must keep up with current computer and software technology and with legislative requirements and developments. In addition, as patient data become more frequently used for quality management and in medical research, health information managers ensure that databases are complete, accurate, and available only to authorized personnel.

Some of the occupations in the classification of medical and health services managers normally require at least a bachelor's degree in a specific specialty such as the study of health services administration. Although the petitioner has identified its position as that of a health services administrator, its description of the beneficiary's duties lacks the specificity and detail necessary to substantiate the petitioner's contention. The petitioner failed to offer a detailed description of the beneficiary's duties; the duties are described in general terms, such as "manage the scheduling of ultrasounds, HSGs and SHGs," "direct the pregnancy test program," "manage our prenatal obstetrical classes," and "responsible for the on-going administration of the birth control and hormone replacement therapy programs." The petitioner's job description is insufficient in depicting the beneficiary's specific day-to-day duties. For example, no description is given of what directing the pregnancy test program and managing prenatal obstetrical classes involves; or what administration of the birth control and hormone replacement therapy programs entail. CIS must examine the actual employment of a beneficiary, which are the specific tasks to be performed by the beneficiary, to determine whether a position qualifies as a specialty occupation. Given the generic job description offered here, the AAO cannot identify the beneficiary's specific tasks, and therefore, whether the position is that of a health services administrator. Furthermore, without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation as set forth in page two of this decision.

On appeal, counsel asserts that the similarity between the proposed position and the *Handbook's* depiction of a health services manager is sufficient for approval. However, a petitioner cannot establish its employment as

a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title. This generalized description in the *Handbook* is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties associated with specific employment. To establish a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary. A petitioner cannot establish that a position is a specialty occupation by describing the duties of that employment in general terms.

Counsel's assertion that BIA and AAO cases establish that the proposed position is a specialty occupation is not persuasive. In *Matter of Villanueva*, 13 I&N Dec. 733 (Deputy Assoc. Comm. 1971), the petitioner sought to employ a medical records librarian. The AAO finds that the proposed position differs from a medical records librarian in that the latter position would not involve managing and directing programs. The duties in the two AAO cases also differ materially from those of the proposed position. In WAC 96 152 51893, the facility administrator position involved budget planning, accounting, establishing rates for health care services, negotiating building improvements, hiring and training personnel, directing and coordinating staff activities, developing policies and procedures, and attending community meetings. The beneficiary will not develop policies and procedures, be involved in budget planning, accounting, rates for services, or building negotiations. In the second AAO case (LIN 96 086 51712) the petitioner sought the services of a coordinator to conduct assessments, participate in planning processes, identify teaching strategies and protocols, implement skill acquisition and behavior management training programs, and document the progress of persons receiving services. The beneficiary will not conduct assessments, participate in planning processes, or identify teaching strategies. Thus, the positions in the BIA and AAO cases are distinguishable from the position that is offered here. Further, the record does not contain the evidentiary record submitted in support of any of these decisions, and the AAO cannot make a meaningful comparison of the duties of each. 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).

Counsel's assertion that university programs establish that the proposed position requires a baccalaureate degree is not convincing as the hiring requirements of employers are not dictated by university programs.

The AAO's conclusion is that the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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 - the petitioner submits a posting from the North Carolina career catalog, which describes a health services administrator as an occupation that may require a baccalaureate degree in a relevant field. Nevertheless, the petitioner has not established that the proposed position is that of a health services administrator. Thus, the career catalog fails to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that its particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As discussed under 8 C.F.R. § 214.2(h)(iii)(A)(1), by describing the beneficiary's duties in general terms, the petitioner fails to establish the proposed position as an occupation that has complex or unique duties that require a baccalaureate degree in a specialty. As such, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To establish the third criterion 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, the petitioner states that a prior employee with a bachelor's degree occupied the proposed position. The submitted approval notice for the former employee relates to another employer, however. Thus, it fails to establish the third criterion.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish 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. As conveyed in the discussion of 8 C.F.R. § 214.2(h)(iii)(A)(1), the proposed position is described in general terms and the record lacks sufficient evidence that would show that the nature of the proposed duties is specialized and complex, requiring a bachelor's degree in a specific field such as health services administration. Consequently, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 director also stated that the beneficiary is not eligible for an extension of status. Extension of status issues are not within the jurisdiction of the AAO and are not before the AAO in this proceeding.

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.