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U.S. Citizenship
and Immigration
Services

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FILE: SRC 05 202 50899 Office: TEXAS SERVICE CENTER Date: JAN 24 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 dental office. It seeks to employ the beneficiary as a treatment and insurance coordinator. 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 on the ground that the proposed position is not a specialty occupation. Counsel submitted a timely appeal.

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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a treatment and insurance coordinator. Evidence of the beneficiary's duties includes: the Form I-129, the attachments accompanying the Form I-129, the petitioner's support letter, and its response to the RFE. According to this evidence, the beneficiary's duties are as follows: plans, develops, and administers the health information system for the health care facility; develops and implements policies and procedures so as to document, store, and retrieve information, and process medical-legal documents, insurance data, and correspondence requests; establishes uniform correspondence procedures and style practices; formulates procedures for systematic retention, protection, retrieval, transfer, and disposal of records; verifies patients' insurance coverage on an annual basis; submits claims electronically and in paper; submits x-rays by scanning, Fast Attach, and Web Claim; follows up on outstanding insurance claims; provides medical care evaluation with medical staff; analyzes patient data for reimbursement, facility planning, and quality of patient care; discussing patient data and care with patient and presenting the patient with financial options regarding treatment prescribed by the doctor; ensuring that the patient understands the treatment sequence and their financial obligations; and reviewing with the patient his or her special needs before, during, and after treatment and discussing them with the doctor. The August 24, 2005 letter from the petitioner elaborated on the beneficiary's duties. For the proposed position the petitioner requires a bachelor's degree in health sciences with experience in healthcare.

The director denied the petition. He found that the beneficiary's primary duties involved administrative tasks such as handling insurance claims and arranging payments and would not require a bachelor's degree in health sciences. The submitted letters and job postings did not persuade the director to find that the proposed position qualifies as a specialty occupation.

On appeal, counsel states that the proposed position is encompassed within the Department of Labor's *Occupational Outlook Handbook's* (the *Handbook*) medical and health services manager classification, which reports that a master's degree is the standard credential for most medical and health services manager positions, and that a bachelor's degree is adequate for some entry-level positions in smaller facilities. Counsel also states that the *Dictionary of Occupational Titles (DOT)* indicates that the proposed position qualifies as a specialty occupation with a Specific Vocational Preparation (SVP) rating of 8. According to counsel, a treatment and insurance coordinator is a new position in medical and dental offices and is an occupation in transition that requires knowledge of dentistry normally associated with at least a bachelor's degree in a specialized area. Counsel references letters from other dental offices to show that the beneficiary's position requires a bachelor's degree. Counsel asserts that in a prior decision the AAO found an orthodontic research assistant was a specialty occupation on the ground that it was similar to a physician assistant, a specialty occupation. Counsel states that the proposed position is similar to a physician assistant; it therefore requires a bachelor's degree. Counsel contends that the beneficiary must extract medical information from patients and communicate treatment options and insurance information to them and communicate information to the dentist. The beneficiary must understand concepts and terminology in medicine and dentistry and business and management, counsel states. According to counsel, the petitioner previously employed a person with a bachelor's degree in biological sciences as a patient coordinator, a similar position to that of the beneficiary's, but with more narrowly defined job duties.

Upon review of the record, the petitioner has established none of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The proffered position is therefore not a specialty occupation.

Counsel asserts that the *DOT* reveals that the proposed position is a specialty occupation. The *DOT* is not a persuasive source of information regarding whether a 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. An 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. For this reason, the *DOT's* information is not enough to establish the proposed position as a specialty occupation.

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.

Factors often considered by CIS when determining whether a position is a specialty occupation includes: 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)).

The first criterion to be considered is 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The *Handbook* reveals that the proposed duties are similar to those of a medical records and health information technician; it states the following:

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. . . .

Medical records and health information technicians' duties vary with the size of the facility where they work. In large to medium-sized facilities, technicians might specialize in one aspect of health information or might supervise health information clerks and transcriptionists while a medical records and health information administrator manages the department. (See the statement on medical and health services managers elsewhere in the *Handbook*.) In small facilities, a credentialed medical records and health information technician sometimes manages the department.

The beneficiary's duties are encompassed within those of a medical records and health information technician. A medical records and health information technician organizes and evaluates patients' records for completeness and accuracy; assembles patients' health information; communicates with physicians and other health care professionals to clarify diagnoses or to obtain additional information; codes patients' medical information for insurance purposes; uses 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. The petitioner's July 7, 2005 letter states that the beneficiary will "[d]evelop and implement policies and procedures for documenting, storing, and retrieving information"; "[f]ormulate procedures for systematic retention, protection, retrieval, transfer, and disposal of records"; "analyze patient information for reimbursement, facility planning, and quality of patient care"; verify patients' insurance coverage; and submit insurance claims. These tasks correspond to the description of a medical records and health information technician.

The *Handbook* conveys that employers do not require medical records and health information technicians to hold a baccalaureate degree in a specific academic field. 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.

Hospitals sometimes advance promising health information clerks to jobs as medical records and health information technicians, although this practice may be less common in the future. Advancement usually requires 2 to 4 years of job experience and completion of a hospital's in-house training program.

Most employers prefer to hire Registered Health Information Technicians (RHIT), who must pass a written examination offered by the American Health Information Management Association (AHIMA). To take the examination, a person must graduate from a 2-year associate degree program accredited by the Commission on Accreditation for Health Informatics and Information Management Education (CAHIIM). Technicians trained in non-CAHIIM-accredited programs or trained on the job are not eligible to take the examination. In 2005, CAHIIM accredited 184 programs for health information technicians.

Experienced medical records and health information technicians usually advance in one of two ways—by specializing or managing. Many senior technicians specialize in coding, particularly Medicare coding, or in cancer registry. Most coding and registry skills are learned on the job. Some schools offer certificates in coding as part of the associate degree program for health information technicians, although there are no formal degree programs in coding. For cancer registry, there were 11 formal 2-year certificate programs in 2005 approved by the National Cancer Registrars Association (NCRA). Some schools and employers offer intensive 1- to 2-week training programs in either coding or cancer registry. Once coders and registrars gain some on-the-job experience, many choose to become certified. Certifications in coding are available either from AHIMA or from the American Academy of Professional Coders. Certification in cancer registry is available from the NCRA.

In large medical records and health information departments, experienced technicians may advance to section supervisor, overseeing the work of the coding, correspondence, or discharge sections, for example. Senior technicians with RHIT credentials may become director or assistant director of a medical records and health information department in a small facility. However, in larger institutions, the director usually is an administrator with a bachelor's degree in medical records and health information administration.

Based on the evidence in the record and the *Handbook's* information, the petitioner fails to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): that a baccalaureate or higher degree or its equivalent 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 the degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submits job postings and letters from other companies. The director was correct in finding that the job postings fail to establish the proposed position as a specialty occupation. The record contains no evidence demonstrating that the companies in the postings [REDACTED]

[REDACTED] are similar in nature to the petitioner. Consequently, the job postings fail to establish that the petitioner's degree requirement is common to the industry in parallel positions among similar organizations to the petitioner.

Of the submitted four letters, only the letter from Dr. [REDACTED] of Family Dentistry states that dental treatment/financial coordinators require a bachelor's degree in science. However, Dr. [REDACTED] does not describe the duties of a dental treatment/financial coordinator; he states that "[t]he job description is very detailed and can be provided at your request." The letter from [REDACTED] CPC, states that the duty of a patient coordinator in a dental practice includes "taking medical and dental histories along with the doctor." According to the petitioner, the beneficiary will "review the dental history with the patients"; he will not take the medical and dental history of patients. The letter from [REDACTED] CPC, therefore describes duties that are not included in the proposed position. For these reasons, the letters fail to establish that the petitioner's degree requirement is common to the industry in parallel positions among similar organizations to the petitioner.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to establish that the particular position is so complex or unique that it can be performed only by a person with a degree in a specific academic field. As previously discussed, the proposed duties are similar to those of a medical records and health information technician, which does not require a bachelor's degree in a specific academic field. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): 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 a specific academic field.

The petitioner has provided no evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that it normally requires a degree or its equivalent for the proposed position. Although the petitioner states that it had employed a person with a bachelor's degree in science in a similar position, this is not enough to establish a past practice over a period of time of normally requiring a bachelor's degree in a specific academic field for the proposed position. In addition, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree

in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. As previously discussed, the proposed position is analogous to a medical records and health information technician, which does not require a bachelor's degree in a specific academic field.

To satisfy the criterion 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 a specific academic field. The proposed position is akin to a medical records and health information technician, which does not require a bachelor's degree in a specific academic field. As such, the petitioner fails to 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 a specific academic field, 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.

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.

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.