



U.S. Department of Justice

Immigration and Naturalization Service

DH

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC-99-137-50301 Office: California Service Center Date: 29 NOV 2001

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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a physician specializing in plastic, reconstructive, cosmetic and hand surgery with 2 employees and a gross annual income of \$334,536. The petitioner seeks to employ the beneficiary as a medical assistant for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submitted a statement.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director denied the petition because the duties described by the petitioner are not so complex as to require a baccalaureate degree. On appeal, the petitioner asserts that her plastic and reconstructive surgery practice places unique demands on a medical assistant which are not usually required by most medical assistant training programs. The petitioner asserts that her practice includes a growing number of Russian-speaking patients and states that she requires a medical assistant who speaks fluent Russian in order to facilitate communication with her patients.

On the Prevailing Wage Request Form the petitioner states her medical assistant must perform any combination of the following duties:

- 1) interview patients;
- 2) measure vital signs and record information on patient's chart;
- 3) prepare treatment rooms for examination of patients;
- 4) drape patients with covering and position instruments and equipment;

- 5) hand instruments and materials to doctor as directed;
- 6) clean and sterilize instruments and inventory other equipment;
- 7) administer routine diagnostic tests and call medical facility or department to obtain results from laboratory tests;
- 8) Schedule appointments, receive money for bills, keep X-rays and other medical records;
- 9) Perform secretarial tasks and complete insurance forms;
- 10) Key patient information into bookkeeping ledgers and compute and mail monthly statements to patients;

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with the petitioner's argument that the duties of this particular position are far more complex than those of most medical assistants and cannot be obtained by even extensive training programs. The proffered position is clearly that of a medical assistant. The Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, describes the normal duties of medical assistants as follows:

Medical assistants perform many administrative duties. They answer telephones, greet patients, update and file patient medical records, fill out insurance forms, handle

correspondence, schedule appointments, arrange for hospital admission and laboratory services, and handle billing and booking.

Clinical duties may include taking medical histories and recording vital signs, explaining treatment procedures to patients, preparing patients for examination, and assisting the physician during the examination. Medical assistants collect and prepare laboratory specimens or perform basic laboratory tests on the premises, dispose of contaminated supplies and sterilize medical instruments.

Medical assistants may also arrange examining room instruments and equipment... and purchase and maintain supplies and equipment.

The duties of a medical assistant as described above closely parallel those of the proffered position. The only unusual requirement of this particular position is the need for an individual who speaks fluent Russian to assist in communication with Russian-speaking patients. The petitioner may be correct in her assertion that it is difficult to locate a competent medical assistant who speaks fluent Russian; however, the Handbook at pages 342-343 does not indicate that a baccalaureate or higher degree in a specialized area is required for employment as a medical assistant. Medical assisting programs are offered in vocational-technical high schools, postsecondary vocational schools, community and junior colleges, and colleges and universities. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that she has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as biomedical sciences, for the offered position. Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the

offered position is a specialty occupation within the meaning of the regulations.

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.