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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3rd Floor
425 I Street, N.W.
Washington, DC 20536

D2

FEB 06 2004

FILE: WAC-02-206-50159 OFFICE: CALIFORNIA SERVICE CENTER DATE:

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)

IN BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision 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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 provides employment services. It seeks to employ the beneficiary as a utilization review analyst. 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 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.

The I-129 petition described the position as follows:

> Assess the extent to which health services are provided in compliance with standards set by the insurance

> agencies; [r]eview patients' medical records and cross-reference the records with medical insurance data bases to ensure that proper cost-effective treatment is provided; [r]ecords [sic] patients' medical information and vital signs; [r]esponsible for collecting data on a quarterly and year-end basis to allow assessment and evaluation of the effectiveness of the Utilization Management Program; [d]etermine areas where intervention and/or education may be appropriate.

Counsel's letter accompanying the petition stated that a candidate must possess a bachelor's degree. Counsel further stated that the State of Virginia's Human Resources Department requires a bachelor's degree in nursing or medicine for utilization review analyst positions.

On January 8, 2003, the director requested additional information. In response, the petitioner, through counsel, submitted a detailed job description; position announcements; a copy of a contract between the petitioner and the beneficiary; a copy of a contract between the petitioner and the client-employer; evidence to establish degree equivalency; the beneficiary's employment verification letters; and an educational evaluation.

The petitioner submitted a letter explaining why a bachelor's degree is required, and the letter also amplified the job description as follows:

> Coordinates and directs the review of services provided to patients to assure efficient and effective use of resources. Ensures appropriate utilization of facilities and services and provides for the review of admissions, duration of stay, professional services to be rendered by the health care facility. Analyzes patient records or client medical history to determine treatment and patient requirements. Analyzes the appropriateness of admission, necessity of continued stay in health care facility[,] and other related factors. Reviews, monitors and assesses utilization of facility services. Administers the [u]tilization [r]eview and [m]anagement procedures as required under federal, state and county regulations (25% - 10 hours per week)
>
> Determines levels and types of care and treatment needed by patients, based on client's medical history and records. Reviews patient records to ascertain medical justification for admission. Assures that patients receive the appropriate service and level of care. Orders, interprets and evaluates diagnostic tests to identify and assess patients' conditions. (15% - 6 hours per week)

Works with administrative and medical staff and government health agency review staff to ensure effective utilization of medical services and appropriate medical service reimbursement. Establishes, interprets and applies policies and procedures pertaining to the management of the Utilization Review and Management Program. Participates in the development of a written plan that describes the facility's Utilization Review [P]rogram and governs its operations. Works closely with medical, nursing[,] and other professional staff to interpret Utilization Review [P]rogram changes and implement revisions to operational procedures. Reviews facility's internal policies and procedures regarding admission, treatment, emergencies, staff responsibilities, and maintenance of services. Reviews and compares patient medical records against established criteria; recommends appropriate changes or policy actions. (15% - 6 hours per week)

Analyzes patient records to determine compliance with government and insurance company health insurance and reimbursement policies. Assesses the extent to which medical and other related services are provided in compliance with standards set by insurance agencies. Consults with reviewing agencies including Medi-Cal, Medicare[,] and private insurance companies regarding the preparation and processing of documents for reimbursement for services. Informs professional staff about documentation required for reimbursements, program coverage[,] and utilization review activities. Reports overpayments, underpayments or other irregularities. Reviews medical records and other documentation in response to denials or authorizations for reduced services as received from reviewing agencies. Coordinates with medical and management staff in preparing appeals of adverse decisions. Compiles data to be used as evidence in claims that require litigation. (20% - 8 hours per week)

Responsible for collecting data on a quarterly and year-end basis to allow assessment and evaluation of the effectiveness of the Utilization Management [P]rogram and to determine areas where intervention and/or education may be appropriate. Maintains effective reporting systems. Evaluates data and statistics. Prepares necessary reports for submission to review agencies. Maintains close liaison with federal, state, county departments[,] and other health care agencies. (15% - 6 hours per week)

> Confers with facility management, including medical and other professional staff, regarding streamlining admission requirements and procedures, improving treatment procedures and priorities, and determining continuance of health care services. Plans and coordinates activities of the various service components of the health care facility to insure compliance with the mandates of regulator agencies. (10% - 4 hours per week)

The director denied the petition, stating that the position is not a specialty occupation. The director noted that the duties of the position reflect those performed by a registered nurse, as found in the 2000-2001 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*).

To establish that a position qualifies as a specialty occupation, employers must satisfy one of four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

I. <u>A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.</u>

Counsel claims, on appeal, that the beneficiary's duties are not parallel to those of a registered nurse; the beneficiary will not have direct patient contact or plan or provide patient care. To validate this claim, counsel submits a copy of the Department of Labor's *Dictionary of Occupational Titles* (*DOT*) description of a utilization review analyst/coordination and a registered nurse.

Counsel's contentions do not prevail. Citizenship and Immigration Services (CIS) looks beyond the title of the proffered 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. The Department of Labor has replaced the *DOT* with the *Occupational Information Network* (*O*Net*). Both the *DOT and O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into an occupation and advance within that occupation.

According to the *Handbook*, the duties of the proffered position are a combination of those performed by physicians, medical assistants, and medical records and health information technicians. About 15 percent of the beneficiary's duties are

performed by physicians. For example, determining patients' care and treatment based on their medical history and records; reviewing patient records to ascertain the medical justification for admission; and ordering, interpreting, and evaluating diagnostic tests to identify and assess patients' conditions, are duties performed by physicians. The beneficiary's remaining duties are performed by medical records and health information technicians and medical assistants. For instance, the beneficiary's duty, to review patients' medical records and cross-reference the records with medical insurance databases, and to collect data, are performed by medical records and health information technicians. Likewise, the beneficiary's duty to record patients' medical information and vital signs is performed by medical assistants.

With respect to training, qualifications, and advancement, the *Handbook* explains that candidates seeking physician positions require four years of undergraduate school, four years of medical school, and three to eight years of internship and residency, depending on the specialty selected. For medical assistants, the *Handbook* states that most employers prefer graduates of formal programs in medical assisting and that such programs are offered in vocational-technical high schools, postsecondary vocational schools, community and junior colleges, and in colleges and universities. Postsecondary programs, the *Handbook* reports, usually last either one year, resulting in a certificate or diploma, or two years, resulting in an associate degree. Medical records and health information technician positions enter the field possessing an associate degree from a community or junior college.

Thus, according to the *Handbook,* employers do not require a bachelor's degree to perform the bulk of the duties of the proffered position. No evidence in the record establishes the beneficiary's qualifications to perform physicians' duties.

II. <u>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.</u>

Not only do the job duties of MedHunters.com's advertisement differ substantially from the beneficiary's duties, but also the petitioner's business differs from the advertiser's. Therefore, the advertisement has no probative value. Moreover, the *Handbook* evinces that a bachelor's degree is not required to perform most of the beneficiary's duties.

III. <u>The employer normally requires a degree or its equivalent for the position.</u>

No evidence in the record establishes the third criterion.

IV. 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 nature of the proffered position's duties attributed to physicians, about 6 hours per week, is specialized and complex, requiring four years of undergraduate school, four years of medical school, and three to eight years of internship and residency. However, according to the *Handbook*, the majority of the beneficiary's duties are performed by medical assistants and medical records and health information technicians - positions that do not require a baccalaureate or higher degree. Consequently, the petitioner fails to establish the fourth criterion because the knowledge required to perform the majority of the beneficiary's duties is not associated with the attainment of a baccalaureate or higher degree.

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.