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U.S. Citizenship and Immigration Services

[redacted]

FEB 11 2004

FILE: LIN 02 195 52610 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

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 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 is a home health agency that seeks to employ the beneficiary as a health information analyst. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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 information analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's May 1, 2002 letter in support of the petition;

and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: applying advanced clinical skills in reviewing diagnostic and procedure codes on all patient records; evaluating treatment plans to determine Medicare or Medicaid eligibility; implementing clinical data validation measures and analyzing abnormal clinical findings, medications, and surgical procedures to optimize reimbursement from Medicare, Medi-cal, or Medicaid; implementing the petitioner's health information system and record keeping procedures, as well as organizing its data management and analysis processes; approving release of medical records and implementing close confidentiality rules; serving as coding systems resource; and preparing and compiling medical reports and data. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in a medical, nursing, or related discipline.

The director found that the proffered position was not a specialty occupation because the job is primarily that of a health information technician. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*), 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position, which requires analytical work and advanced knowledge of medicine and dentistry, requires a baccalaureate degree in Life Sciences, Healthcare Administration, Medicine, Dental Medicine, Medical Technology, or a related discipline. Counsel further states that the proffered position was created in order to comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996, which requires transition of the collection of health information from a paper-based process to an electronic computer-based environment.

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.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*1*) and (*2*): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position requires a baccalaureate degree in Life Sciences, Healthcare Administration, Medicine, Dental Medicine, Medical Technology, or a related discipline. A review of the Medical Records and Health Information Technician job description in the *Handbook* confirms the accuracy of the director's assessment to the effect that the job duties parallel those responsibilities of a technician. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a medical records and health information technician job.

Counsel's comments regarding the type of credentials required for the proffered position in the petitioner's industry are without merit. Counsel's personal observations do not constitute evidence in these proceedings. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel's comments regarding the HIPAA of 1996, which requires transition of the collection of health information from a paper-based process to an electronic computer-based environment, are noted. Page 26 of the HIPAA Overview document, entitled "How will HIPAA regulations impact my organization?" states, in part: "Admitting and registration staff will have to learn new definitions for many of the data elements." This information does not support counsel's assertion that the proffered position requires an individual with a baccalaureate degree in Life Sciences, Healthcare Administration, Medicine, Dental Medicine, Medical Technology, or a related discipline. In view of the foregoing, the director concluded correctly that the proffered position does not require a baccalaureate degree, or its equivalent, in a specific specialty.

Regarding parallel positions in the petitioner's industry, the record contains a variety of Internet job postings. There is no evidence, however, to show that the proposed duties of the proffered position are as complex as those listed in the job postings. For example, one position is that of a health information analyst to perform auditing duties for the largest nonprofit hospital in the western United States. Another position is that of a health information analyst to code all medical records for St. Jude Children's Research Hospital. As the petitioner has not demonstrated that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position, the advertisements have little relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*2*).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further.

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(iii)(A)(*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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 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.