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U.S. Citizenship and Immigration Services

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[redacted]

JAN 27 2004

FILE: WAC 01 275 51900 Office: CALIFORNIA 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 medical services billing company that seeks to employ the beneficiary as a patient account representative. 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 and additional documentation.

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, dated September 14, 2001; (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 patient accounts representative. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 1, 2001 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: monitoring and verifying the accuracy of patient and insurance information received from medical clients; researching and resolving accounts; submitting appeals on insurance claims; rebilling claims processing; handling collections and electronic billing of accounts; and the cleaning up aging reports and generally maintaining patient ledger and insurance data. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in a natural science with relevant experience in medical terminology.

The director found that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Citing to the Department of Labor's *Occupational Outlook Handbook* (*Handbook*), 2002-2003 edition with regard to the claims representative classification, the director noted that a high school education appears to be sufficient to qualify for entry into most positions, although employers preferred to hire college graduates as claims representatives.

On appeal, counsel states that the proffered position contains duties beyond the entry-level claims representative position. Counsel resubmits vacancy announcements for positions that it claims are parallel positions in the medical billing and accounts management industry. Counsel also asserts that the documentation submitted by the petitioner on the five employees who perform the same job as the proffered position establishes that the employer normally requires a degree or its equivalent for the position. Counsel also reiterates the contents of the petitioner's letter with regard to job responsibilities and asserts that these job duties clearly show the level of specialized knowledge needed to perform the duties of the position.

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. A review of the claims representative 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 claims representative. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a claims representative job.

Regarding parallel positions in the petitioner's industry, the petitioner submitted four job vacancy announcements taken off of the Internet. The four positions were located in different types of companies and had varying responsibilities. One position handled reimbursement for a particular medical product, another provided inpatient billing activity support to a medical faculty, the third position was a medical biller for a physicians group, and the fourth was for a business office manager with billing responsibilities. These vacancy announcements either specified no specific baccalaureate degree or identified a range of preferred

degrees and course work and experience. Only one position required a baccalaureate degree in a specific specialty, and that was a bachelor's degree in accounting or finance for the business office manager position. These positions and their academic requirements are not found to be parallel positions in similar businesses. 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. On appeal, counsel states that all five of the petitioner's employees who perform the same job, hold baccalaureate degrees. The list of current patient account representatives submitted by the petitioner indicates that two patient account representatives hold a bachelor's degree in science, one representative holds a degree in psychology, and the remaining two respectively hold a master's degree in a non-specified field and a bachelor's degree in a non-specified field. The petitioner provided no documentation such as diplomas to further substantiate any of the academic credentials of its patient account representatives. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, as previously stated, 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 petitioner's documentation on its current patient account representatives does not establish any requirement for a baccalaureate degree in a specific specialty.

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. In response to the director's request for further evidence, the petitioner provided a breakdown of twenty specific duties for the proffered position. Some duties were described as "handling patient phone calls," "verifying new patient insurance coverage," and "posting all charges submitted from the physician's office." While the number of duties may reflect the detailed nature of the position, the breakdown of duties does not substantiate any specialized or complex nature of the duties. 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.