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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 03 031 52279 Office: CALIFORNIA SERVICE CENTER Date: MAY 04 2004

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.

Mari Johnson

for 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 clinic, and seeks to employ the beneficiary as a medical writer. 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 basis that the proffered position was not a specialty occupation. On appeal, counsel states that the proffered position is a specialty occupation. Counsel had indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days of the filing of the appeal. To date, no brief or additional evidence has been submitted. The record is, therefore, deemed complete.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R.§ 214.2(h)(4)(ii) as:

> [A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

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 proceedings 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) 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 medical writer. Evidence of the beneficiary's duties includes: the I-129 petition with attachment; and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: compile and maintain medical reports and related documentation of patients; examine patients' records, interview charts, physician reports, and test results to compose complete medical reports for the ultimate approval and execution by the treating physician; ascertain the medical significance of patients' injuries or disease in order to write reports to be used by the Worker's Compensation Board, insurance companies, Medicare, Medical, and other physicians; keep abreast on the latest medical research results by performing research in the medical library; and coordinate medical care evaluation and develop criteria/methods for such evaluation/reports. It is the petitioner's position that the minimum education required for the offered position is a bachelor's degree in medicine, or other health sciences.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel states that the proffered position is that of a medical writer, and qualifies as a specialty occupation.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The petitioner insists that the proffered position is that of a medical or technical writer as defined in the *Handbook*:

> *Technical writers* put scientific and technical information into easily understandable language. (Emphasis original.) They prepare scientific and technical reports, operating and maintenance manuals, catalogs, parts lists, assembly instructions, sales promotion materials, and project proposals. They also plan and edit technical reports and oversee preparation of illustrations, photographs, diagrams, and charts. *Science and medical writers* prepare a range of formal documents presenting detailed information on the physical or medical sciences. (Emphasis original.) They impart research findings for scientific or medical professions, organize information for advertising or public relations needs, and interpret data and other information for a general readership.

The duties set forth for the proffered position do not coincide with those of technical writers, or science and medical writers. The beneficiary would review medical records and prepare reports to be submitted to administrative agencies, insurance companies, and other healthcare providers. He would also perform some medical research on current medical developments. The writing to be done by the beneficiary is not for the purpose of reporting research findings to the scientific or medical communities, but to present physicians' findings to the aforementioned administrative agencies and insurance companies. The record is not clear as to whether those writings would be used to present medical opinion, or simply for such administrative tasks as billing support or the preparation of treatment summaries. It is clear, however, that the beneficiary's writings would be done under the supervision of the physician employer, and restate the physician's findings to those entities. The petitioner has not established that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the proffered position. Indeed, many of the cited duties are performed by nurses and/or medical records and health information technicians. Those positions do not require a minimum of a bachelor's degree, or its equivalent, for entry into the position. The petitioner has, therefore, failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. In support of that assertion the petitioner submitted copies of job advertisements. While those advertisements were for medical writers, they were not for parallel positions to the one offered herein, and they were not from similar organizations to that of the petitioner. They are, therefore, of little evidentiary value. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Furthermore, the duties of the position are not so complex or unique that they can be performed only by an individual with a degree, nor are they so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4). Finally, the petitioner does not contend that it normally requires a degree or its equivalent for the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.