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FILE: WAC 02 264 52203 Office: CALIFORNIA SERVICE CENTER Date: SEP 02 2005

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 provider that seeks to employ the beneficiary as a medical researcher. 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 petitioner did not establish that the beneficiary would be employed in a specialty occupation. On appeal, the petitioner submits a letter.

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.

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 requests for additional evidence; (3) the petitioner's responses to the director's requests; (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 medical researcher. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 1, 2002 letter in support of the petition; and the petitioner's responses to the director's requests for evidence. According to this evidence, the beneficiary would perform duties that entail: reviewing and analyzing professional medical journals for new findings that are relevant to the petitioner's physicians and staff to keep them updated on new developments in their field; preparing articles, reports, digests and briefs for use and information of the physician, staff, client, the client's family, and the general public; organizing research and reference materials; creating a library of articles relating to medical conditions for use by physicians and staff to aid them in new approaches in patient management and treatment; indexing and cross-referencing, compiling and organizing research and reference materials for use by physicians and medical staff; making digests and discussing research findings with physicians for their application to patient management and treatment; under the direction of the physician, reviewing the patient's medical history to aid in research work; eliciting detailed patient histories from patients to aid research work and organizing patients' files; and assisting the physician in preparing reports and memoranda on studies that impact the physician's field. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in medical sciences.

The director found that the proffered position was most like a medical or technical writer, which is normally a specialty occupation. The director determined, however, that the petitioner did not establish that it would be employing the beneficiary in that occupation, and that it was not credible that a company with eight employees would employ a medical researcher/writer on staff.

On appeal, the petitioner states that it has 19 employees, not eight as the director stated. The petitioner states that it was attaching a list of the doctors and specialists in the medical group, which includes eight facilities, as well as a copy of the petitioner's website. The appeal has no attachments, however. The petitioner states that the AAO has previously determined that both a medical research assistant position and a technical writer with a health care facility qualified as specialty occupations. The petitioner asserts that these two positions are similar to the proffered position, and that the Department of Labor's *Occupational Outlook Handbook (Handbook)* indicates that a degree in one of the sciences is required for a medical writer. The petitioner also states that the Department of Labor's *O*Net* indicates that the position of a technical writer has a JobZone rating of five, meaning that it requires a bachelor's degree for entry into the occupation.

The AAO does not agree with the director and the petitioner that the position has elements that are substantially similar to a technical writer, a position that is typically a specialty occupation, according to the *Handbook*. The position is primarily that of a registered nurse.

The proffered position's duties are most similar to those of a registered nurse. The *Handbook* describes some of the duties of a nurse: "They are advocates and health educators for patients, families, and communities. When providing direct patient care, they observe, assess, and record symptoms, reactions, and progress in patients. . . . and maintain records." The beneficiary would be recording patient histories and reviewing these histories with a physician. In addition, the beneficiary would be assisting the physician in making determinations about patient care. The *Handbook* states that a bachelor's degree is not required for entry into the nursing field: "There are three major educational paths to registered nursing: a bachelor's of science degree in nursing (BSN), an associate degree in Nursing (A.D.N.), and a diploma. . . . Generally, licensed graduates of any of the three types of educational programs qualify for entry-level positions as staff nurses."

The petitioner did not submit any evidence regarding parallel positions in the petitioner's industry, or 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. There is no evidence in the record regarding the petitioner's past hiring practices.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(4)(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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified for a position as a nurse. While the petitioner submitted an educational evaluation stating that the beneficiary has the equivalent to bachelor's degree in nursing from a U.S. college or university, the beneficiary is not licensed as a nurse in the state of California, as would be required to perform the duties of a nurse. For this additional reason, the petition may not be approved.

The AAO notes that the beneficiary is out of status, and would not be eligible to change her status, although that issue is not before the AAO.

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.