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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: LIN 04 199 51971 Office: NEBRASKA SERVICE CENTER Date: AUG 0 2 2006

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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Nebraska 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 diagnostic services provider, was established in 1981, has 100 employers, and gross annual income of approximately $10 million. The petitioner seeks to employ the beneficiary as a nuclear medicine technologist. 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 based on his determination that the proffered position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE, dated February 3, 2005; (4) the director's denial letter; and (5) Form I-290B, with the petitioner's brief and new and additional evidence. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a nuclear medicine technologist. The petitioner stated that it required a bachelor's degree.

The director found that the proffered position was not a specialty occupation because the duties are not so specialized and complex as to require a bachelor's degree in a specific field of study. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*), 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).

The director found that the duties of the proffered position are similar to that of nuclear medicine technologist as described in the 2004-2005 *Handbook.*

Section 214(i)(l) of 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 petitioner is seeking the beneficiary's services as a nuclear medicine technologist. Evidence of the beneficiary's duties includes: the I-129 petition and supporting documents. According to this evidence, the beneficiary would:

- Obtain patients' complete medical history as it pertains to the exam as well as their condition to ensure patient comfort, privacy, and safety during procedures;
- Explain diagnostic procedures and ensure that the patients have been properly prepped;
- Obtain blood pressure readings and set up 12-lead EKG's;
- Utilize and apply knowledge of radiation physics and safety regulations to limit patient and personnel radiation exposure in relation to nearly all activity;
- Utilize ability to recognize emergency patient conditions and react accordingly;
- Acquire and process images in an exact and efficient manner to produce quality images for physician interpretation and for completing all paperwork as required;
- Responsible for the maintenance, testing, and preparation of nuclear medical equipment and supplies;
- Ensure the safe handling, storage, and disposal of radioactive materials, maintain appropriate levels of necessary supplies, and practice proper disposal of all potentially sharp hazards;
- Utilize knowledge of Geiger counters, well counters, and uptake probes to perform quality control testing of equipment including gamma cameras, uptake probes, and dose calibrators;
- Responsible for generator elution following sterile procedure, performing molybdenum contamination checks, aluminum break through testing, preparation of radiopharmaceuticals following sterile procedures, performing quality control checks on prepared kits, and confirmation of correctly pre-calibrated unit doses;

- Utilize his knowledge of appropriate labeling necessary for transportation of radioactive packages, unit doses and return generator packages, as well as perform daily area surveys, weekly area wipes, and clean radioactive spills using proper techniques;

- Take additional responsibilities within Med-Share, Inc., including attending monthly Nuclear Medicine Technologist meetings and directing and coordinating the care and imaging of patients by taking a leadership role.

Upon review of the records, the AAO finds that proffered position is not a specialty occupation because the duties reflect those of a nuclear medicine technologist. The record lacks information specifically sufficient to describe the substantive work that the position would involve beyond a nuclear medicine technologist. Petitioner stated generalized duties, such as the maintenance, testing, and preparation of nuclear medical equipment and supplies, obtain blood pressure readings and set up 12-lead EKG's, and ensure the safe handling, storage, and disposal of radioactive materials, maintain appropriate levels of necessary supplies, and practice proper disposal of all potentially sharp hazards. Thus, there is insufficient information to gauge the proximity of the proffered position to any other occupational category. 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 872, 1102 (S.D.N.Y. 1989)).

The proffered position is similar to that of a medical records and nuclear medicine technologist. The 2006-2007 electronic version of the *Handbook*, at http://www.bls.gov/oco/ocos104.htm, states that:

> Diagnostic imaging embraces several procedures that aid in diagnosing ailments, the most familiar being the x ray. Another increasingly common diagnostic imaging method, called magnetic resonance imaging (MRI), uses giant magnets and radio waves, rather than radiation, to create an image. In nuclear medicine, radionuclides—unstable atoms that emit radiation spontaneously—are used to diagnose and treat disease. Radionuclides are purified and compounded to form radiopharmaceuticals. Nuclear medicine technologists administer radiopharmaceuticals to patients and then monitor the characteristics and functions of tissues or organs in which the drugs localize. Abnormal areas show higher-than-expected or lower-than-expected concentrations of radioactivity. Nuclear medicine differs from other diagnostic imaging technologies because it

> determines the presence of disease on the basis of biological changes rather than changes in organ structure.
>
> Nuclear medicine technologists operate cameras that detect and map the radioactive drug in a patient's body to create diagnostic images. After explaining test procedures to patients, technologists prepare a dosage of the radiopharmaceutical and administer it by mouth, injection, inhalation, or other means. They position patients and start a gamma scintillation camera, or "scanner," which creates images of the distribution of a radiopharmaceutical as it localizes in, and emits signals from, the patient's body. The images are produced on a computer screen or on film for a physician to interpret.
>
> When preparing radiopharmaceuticals, technologists adhere to safety standards that keep the radiation dose to workers and patients as low as possible. Technologists keep patient records and record the amount and type of radionuclides that they receive, use, and discard.
>
> ...
>
> Nuclear medicine technologists also perform radioimmunoassay studies that assess the behavior of a radioactive substance inside the body. For example, technologists may add radioactive substances to blood or serum to determine levels of hormones or of therapeutic drugs in the body. Most nuclear medicine studies, such as cardiac function studies, are processed with the aid of a computer.

In its *Handbook*, 2006-2007 edition, the DOL states the following about the training and educational requirements for nuclear medicine technologist positions:

> Many employers and an increasing number of States require certification or licensure. Aspiring nuclear medicine technologists should check the requirements of the State in which they plan to work. Certification is available from the American Registry of Radiologic Technologists and from the Nuclear Medicine Technology Certification Board. Some workers receive certification from both agencies. Nuclear medicine technologists must meet the minimum Federal standards on the administration of radioactive drugs and the operation of radiation detection equipment.
>
> Nuclear medicine technology programs range in length from 1 to 4 years and lead to a certificate, an associate degree, or a bachelor's degree. Generally, certificate programs are offered in hospitals, associate degree programs in community colleges, and bachelor's degree programs in 4-year colleges and universities. Courses cover the physical sciences, biological effects of radiation exposure, radiation protection and procedures, the use of radiopharmaceuticals, imaging techniques, and computer applications.

> One-year certificate programs are for health professionals who already posses an associate degree—especially radiologic technologists and diagnostic medical sonographers—but who wish to specialize in nuclear medicine. The programs also attract medical technologists, registered nurses, and others who wish to change fields or specialize. Others interested in nuclear medicine technology have three options: a 2-year certificate program, a 2-year associate degree program, or a 4-year bachelor's degree program.

The *Handbook* is clear that a baccalaureate degree or its equivalent is not the normal minimum requirement for entry into the occupation. As the *Handbook* does not indicate that a bachelor's degree or its equivalent is required as a minimum for entry into the occupation, the petitioner has not established the first criterion.

Accordingly, the AAO finds that the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO now turns to a consideration of whether the proffered position may qualify as a specialty occupation under either of the prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(ii)(A)(*2*) – establish that a degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

As already discussed, the *Handbook* does not indicate that the position here proffered is one to which the minimum entry requirement is normally a bachelor's degree, or the equivalent, in a specialty. The record does not include any submission from firms, individuals, or professional associations regarding an industry standard.

Regarding parallel positions in the petitioner's industry, the petitioner submitted 7 Internet job postings for various positions. One of the advertisements requires a MD license, one is for a senior nuclear medicine technologist, four are with hospitals, one is from a staffing firm that provides no description of the duties of the position, and one is a cardiology center. The petitioner is a medical diagnostic services provider, unlike any of the advertisers. Further, the number of advertisements are insufficient to establish that the usual recruiting and hiring practices for the industry or, in that matter, even the entities that placed the advertisements.

As previously discussed the duties of the proffered position resemble a medical records and health information technician. It is also noted that several of the advertised positions require a licensure. Further, the duties of the advertised positions are not specific enough to compare with the job duties of the proffered position. Also, the advertisements do not support the position's claims; these specify no major or academic concentration for the bachelor's degree that they require; one does not specify a requirement for any bachelor's degree; and one states a bachelor's degree in a job-related field as a preference, not a requirement. Thus, the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations. Accordingly, the first alternative criterion of 8 C.F.R. § 214.2(h)(4)(ii)(A)(*2*) has not been satisfied.

In addition, no documentation to support the complexity or uniqueness of the proffered position was submitted.

As noted above, the petitioner has described duties normally performed by nuclear medicine technologist. In its response to the RFE, in addressing the first, second, and fourth criteria, counsel recognized that the *Handbook* indicates that some employers require only an associate degree for nuclear medicine technologist. However, counsel asserts that the petitioner's diagnostic services are provided in non-traditional clinical or office settings and, that therefore, the duties of the proffered position are more complex and require higher level responsibilities above those of a typical nuclear medical technologist performed in a traditional clinical setting. The AAO finds that the evidence of record does not support the assertion that the job duties are therefore so complex or unique that it can be performed only by an individual with a baccalaureate degree. Neither the affidavit of the petitioner's president, the letter of the petitioner's imaging technical supervisor, the letter from the Vice President of Universal Medical Resources, LLC, or any other evidence of record demonstrates that the proffered position is more complex that or unique from nuclear medicine positions not requiring a bachelor's degree level knowledge in the field. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972)).

Therefore, the record also fails to establish that the position qualifies as a specialty occupation under the second prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(2)* – the position is so complex or unique that it can be performed only by an individual with a degree.

The petitioner has, thus, not established any of 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. To determine the petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. The petitioner provided a list of 7 past employees with degrees, and degree certificates for those employees. Most of the listed employees lack a bachelor's degree in nuclear medical technology. Further, the petitioner has presented only a partial listing of employees who have held the proffered position. Also, the AAO notes that several of the degree certificates are for foreign degrees and are not accompanied by credentials evaluations to establish U.S degree equivalency. As further support of a degree requirement for the position, the petitioner provided a letter from James Wood, Vice President of Universal Medical Resources, LLC stating that his experience with Medi-Share's technologist indicate that they are of the caliber of technologists with bachelor's degrees. The record includes no factual basis as to Mr. Wood's expertise in the area of assessing the educational caliber of the employees he comments upon, and he does not opin upon, or provide evidence of knowledge to authoritatively comment upon the petitioner's normal recruiting and hiring practices in the area of degree requirements. Therefore, the AAO is unable to determine whether the foreign degrees are equivalent of US degrees.

Accordingly, the petitioner is unable to provide evidence of its normal hiring practices with regard to the proffered position and has not established it as a specialty occupation on this basis.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*) requires that a petitioner establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. On appeal, counsel contends that the duties of the proffered position satisfy the criterion's requirements. The AAO does not agree.

As previously noted, the AAO finds the duties of the proffered position to be that of a nuclear medicine technologist. As noted above, the *Handbook* indicates that the range of duties of nuclear medicine technician positions is not normally associated with at least a bachelor's degree in a specific specialty.

As noted above counsel asserts that the petitioner's diagnostic services are provided in non-traditional clinical or office settings and therefore, the duties of the proffered position are more complex and require higher level responsibilities above those of a typical nuclear medical technologist performed in a traditional clinical setting. The petitioner submitted a letter from Pamela Bradford, the petitioner's technologist supervisor, stating that because the duties of the mobile technologist position are performed in a non-traditional clinical or office setting, the beneficiary is required to take charge and responsibility normally performed by a radiation safety officer in a traditional clinical setting. Ms. Bradford's letter is, however, conclusory. Neither it nor the rest of the evidence of record provides a sufficient factual basis upon which Ms. Bradford's based her opinion. The AAO may reasonably ascertain that, in contrast to other nuclear medicine technologist positions performed by persons with less than a bachelor's degree in the specialty, the duties of the position here is not so complex as to require knowledge usually associated with at least a baccalaureate degree. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972)).

Therefore, the proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(4)*.

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position meets the requirements for a specialty occupation set forth 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.

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