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FILE: WAC 04 092 50997 Office: CALIFORNIA SERVICE CENTER Date: APR 03 2006

IN RE: Petitioner:
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:



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 Kelly
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 healthcare facility and seeks to employ the beneficiary as a medical records administrator and to classify her 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 proposed position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the position does qualify 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)(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.

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 fields 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 are 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 bachelor’s or higher degree, but one in a specific specialty that is directly related to the proposed position.

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

The petitioner is seeking the beneficiary’s services as a medical records administrator. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would plan, develop and administer the health information system for the petitioner’s health care facility. Specifically, she would:

- a. implement the philosophy and objectives of the agency.
- b. collaborate with the supervisors in planning, developing and implementing policies and procedures for documenting, storing and retrieving medical records, insurance data, clinical and laboratory requests and other information in accordance with established policies and health care regulations.
- c. maintains medical records of the agency and analyzes patient medical data aimed at providing quality patient care for home health planning and utilization management.
- d. codes diseases, operations, diagnoses and treatments in OASIS.
- e. be responsible for review and evaluation of medical data and will coordinate medical care evaluation in response to each patient.
- f. supervise medical staff in preparing and analyzing medical data to ensure proper documentation, utilization and administration of medical data.
- g. develop in-service educational materials and conduct instructional programs for home health care personnel.
- h. monitor developments and updates on health care programs and assist medical staff in special studies or research.
- i. participate in the development and design of computer software aimed specifically for computerized home health information and medical data administration.
- j. check that the medical records are in accordance with HIPAA compliance policy.
- k. delegate to medical records clerk and data entry clerks the specific jobs assigned to them.
- l. maintain flow of medical records and report to departments.

The petitioner stated that it required a minimum of a bachelor’s degree in pharmacy or a related medical field for entry into the proposed position. The petitioner stated that the position resembled that of a health services manager, as described in the Department of Labor’s *Occupational Outlook Handbook (Handbook)*.

The director denied the petition on the basis that the position was a medical records and health information technician, not a medical and health services manager. The director also denied the petition on the basis that the beneficiary was not qualified to perform the duties of a specialty occupation because she was not licensed as a nursing home administrator and her degree in pharmacy was not relevant to either medical records and health information technician positions or medical and health services manager positions.

Although the petitioner initially likened the proposed position to that of a medical and health services manager, on appeal, counsel asserts that the position only has some duties similar to those of health services managers but that it is not a health services manager position. Counsel asserts that the position is that of a medical records administrator, that it is a specialty occupation, and that the duties of the two occupations are similar but also distinct from one another. Additionally, counsel asserts that the position is not that of a medical and health information technician.

The petitioner need only satisfy one of the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) to show that a position is a specialty occupation. Upon a thorough review of the record, the AAO finds that the petitioner has not established any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The AAO reviewed the petitioner's description of the proposed duties and the *Handbook's* discussion of medical and health services managers and medical records and health information technicians and finds that the proposed position most resembles that of a medical records and health information technician.

The duties of the proposed position differ from those of medical and health services managers. According to the *Handbook*, the duties of health services managers include planning, directing, coordinating, and supervising the delivery of health care, whether in a large or small facility. The duties of one type of health services manager, health information manager, include responsibility for the maintenance and security of all patient records. This requires keeping up with current computer and software technology and with legislative requirements and developments for record maintenance. In addition, health information managers ensure that databases are complete, accurate, and available only to authorized personnel.

The proposed duties closely resemble those of medical records and health information technicians. The *Handbook* indicates that "in small facilities, a credentialed medical records and health information technician sometimes manages the [medical records] department." The duties of most medical and health information technicians include making sure the patients' initial medical charts are complete; regularly communicating with physicians to clarify diagnoses or to obtain additional information; assigning a code to each diagnosis and procedure; using computer programs to tabulate and analyze data to improve patient care, control costs, provide documentation for use in legal actions, respond to surveys, or use in research studies; and supervising health information clerks and transcriptionists. These duties resemble the

proposed duties of planning, developing and implementing policies for documenting, storing, and retrieving medical records; maintaining the agency's medical records; coding disease, operations, diagnoses and treatment; and delegating specific jobs to medical records and entry clerks. According to the Form I-129, the petitioner only employs 20 people. Neither the duty description, nor any other evidence of record demonstrates that the beneficiary's medical records/health information duties would exceed the competency of a medical records and health information technician.

To determine whether the position is a specialty occupation, the AAO first turns to the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) - a bachelor's or higher degree, or its equivalent, in a specific field of study is normally the minimum requirement for entry into the particular position. The *Handbook* states the following regarding the educational requirements for medical records and health information technician positions:

Medical records and health information technicians entering the field usually have an associate degree from a community or junior college. In addition to general education, coursework includes medical terminology, anatomy and physiology, legal aspects of health information, coding and abstraction of data, statistics, database management, quality improvement methods, and computer science. Applicants can improve their chances of admission into a program by taking biology, chemistry, health, and computer science courses in high school.

Hospitals sometimes advance promising health information clerks to jobs as medical records and health information technicians, although this practice may be less common in the future. Advancement usually requires 2 to 4 years of job experience and completion of a hospital's in-house training program.

The *Handbook* indicates that jobs in this area do not require bachelor's degrees for entry into the field. In many cases, advanced knowledge can be acquired on the job and no specialized degree is necessary. Individuals may start out as clerks and work their way up into technician positions. As such, the petitioner failed to establish that a bachelor's or higher degree, in a specific field of study is the normal minimum requirement for entry into the proposed position.

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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. 1095, 1102 (S.D.N.Y. 1989)). The two job announcements the petitioner submits to support this criterion are insufficient evidence of an industry-wide specialized bachelor's degree requirement for parallel positions in similar organizations. The duties of the New York City job are significantly different than the duties of the proposed position in that they involve administration and execution of data management for clinical research being conducted at an Ivy League medical school. The duties in the instant case involve the maintenance of patient records in a home healthcare facility with 20 employees. The New York City position requires a bachelor's degree, but not in any specific field. The job in Boston involves duties and educational requirements significantly distinct from those of the proposed position, that is, managing daily operations in the Medical Records, Laboratory, and Compliance departments of a large children's hospital and a master's degree in health care administration or a

related field. These two job announcements do not establish that the proposed position is a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – the employer normally requires at least a bachelor’s degree or its equivalent, in a specific field of study, for the position. To determine whether a petitioner has established this criterion, the AAO generally reviews the petitioner’s past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, this criterion is not a factor as the petitioner has not submitted evidence to establish a consistent history of hiring individuals with specialized degrees for similar positions and implies that this a newly created position.

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor’s or higher degree in a specific field of study. On appeal, counsel asserts that the duties of the proposed position are even more complex and specialized than those of other health services managers. Without documentary evidence to support counsel’s claim that this particular position is more complex or specialized than other medical records and health information technician positions, the assertions of counsel will not satisfy the petitioner’s burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel further asserts that the director improperly dismissed the assertion that the proposed position is so complex and unique that it can only be performed by an individual with a specific degree because the assertion was made by counsel and not the petitioner. The petitioner asserted in its duty description that the position requires an individual with a degree in pharmacy or a related field but does not provide documentation to support this assertion. Going on record without supporting documentation is not sufficient to meet 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)).

The director also found that the beneficiary would not be qualified to perform the duties of the proposed position if the job had been determined to be a specialty occupation. As the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary’s qualifications.

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.