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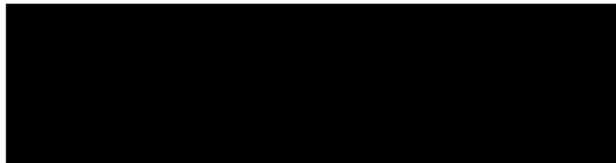
DL

FILE: WAC 04 232 52001 Office: CALIFORNIA SERVICE CENTER Date: OCT 04 2007

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:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision of the AAO will be affirmed. The petition will be denied.

The petitioner is a mobile diagnostic business that seeks to employ the beneficiary as a part-time health services coordinator. The petitioner, therefore, 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. The AAO affirmed the director's findings and found beyond the decision of the director that the record contains an inconsistency related to the amount of gross annual income the petitioner claimed on the petition, \$250,000, and the amount of gross receipts or sales reported on the petitioner's 2003 federal income tax return, \$73,440.

On motion, counsel asserts that the proffered position is a specialty occupation because it meets all four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel also asserts that the AAO erroneously classified the proffered position as a medical records technician and ignored information in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, under the category of Medical and Health Services Managers, which indicates that a bachelor's degree is the minimum requirement for a health services coordinator position. Counsel submits job postings to show that the degree requirement is common to the industry, and asserts that the proposed duties are so complex and unique as to require an individual with a degree. Regarding the inconsistency pertaining to the petitioner's 2003 gross annual income amount reported on the petition, counsel states that the petitioner's letter qualified the \$250,000 amount as "estimated gross annual income" and that the petitioner's gross annual income has tripled since 2003.

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 director's request; (4) the director's denial letter; (5) Form I-290B, with counsel's brief; (6) the AAO's decision to dismiss the appeal; and (7) counsel's motion to reopen. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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 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) consistently interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary's services as a part-time health services coordinator. Evidence of the beneficiary's duties includes: the petitioner's July 18, 2004 letter in support of the petition and the petitioner's

January 4, 2005 response to the director's RFE. As stated in the petitioner's July 18, 2004 letter, the proposed duties are as follows:

**80% HEALTH MANAGEMENT AND MEDICAL ANALYSIS**

Supervise the interpretation, analysis, and implementation of quality standards of each of the petitioner's client hospitals and insurance companies pursuant to their medical requirements and existing contracts, and ensure quality service to the patients.

Manage, coordinate, and supervise the handling of all patient medical requirements, records and service collaterals in an overall effort to improve the quality of patient service. Screen and analyze medical reports and prepare a constructive summary after extensive analysis and interpretation of medical exams or diagnostic results. Develop and implement an effective communication system between hospitals, insurance companies and other health services providers.

**20% LIAISON, COORDINATIVE WORK AND REGULATORY COMPLIANCE**

Handle all service collaterals including affiliations with hospitals and accreditation for "In-Network" category for particular insurance providers, entailing the review and analysis of service agreements and arrangements with hospitals and insurance providers.

Coordinate with the proper parties for legal compliance of medical practice. Establish a coordinating system to provide the petitioner with information on the latest medical breakthroughs, equipment, and procedures.

Included in the petitioner's January 4, 2005 response to the director's RFE, the petitioner submitted the following job description:

**80% HEALTH MANAGEMENT AND MEDICAL ANALYSIS**

- Supervise the interpretation, analysis, and implementation of quality standards of each of the petitioner's client hospitals and insurance companies pursuant to their medical requirements and existing contracts, and ensure quality service to the patients;
- Manage, coordinate, and supervise handling of all patient medical requirements, records and service collaterals in an overall effort to improve the quality of patient service;
- Screen and analyze medical records and prepare a constructive summary after extensive analysis and interpretation of medical exams or diagnostic results;

- Coordinate the administration of required medical examinations and procedures including the timely submission of reports; and
- Develop and implement an effective communication system between hospitals, insurance companies and other health service providers.

**20% LIAISON, COORDINATIVE WORK AND REGULATORY COMPLIANCE**

- Handle all service collaterals including affiliations with hospitals and accreditation for "In-Network" category of insurance providers;
- Review and analyze service agreements and arrangements with hospitals and medical providers;
- Coordinate with the proper parties for legal compliance of medical practice;
- Update the petitioner with current legislation, statutory and local regulations related to medical practice; and
- Establish a coordinating system to provide the petitioner with information on the latest medical breakthroughs, equipment, and procedures.

The record contains the following tax documentation pertaining to the petitioning entity:

- A partial 2005 federal income tax return for the petitioner, which is missing the Form 1120S, and thus the amounts of gross receipts or sales, compensation of officers, salaries and wages are not reflected;
- The petitioner's 2004 federal income tax return reflecting \$151,596 in gross receipts or sales, \$22,549 in compensation of officers, and no salaries and wages paid;
- The petitioner's 2003 federal income tax return reflecting \$73,440 in gross receipts or sales, and no compensation of officers or salaries and wages paid; and
- The petitioner's 2002 federal income tax return reflecting \$3,610 in gross receipts or sales, no compensation of officers, or salaries and wages paid.

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. 1095, 1102 (S.D.N.Y. 1989)).

The AAO does not concur with counsel that the proffered position is similar to that of a medical and health services manager or a clinical manager, as described in the *Handbook*. A review of the *Handbook*, 2006-07 edition, finds that medical and health services managers work primarily in private hospitals, offices of physicians, nursing care facilities, home health care services, federal government health care facilities, ambulatory facilities run by state and local governments, outpatient care centers, insurance carriers, and community care facilities for the elderly. In this case, information on the petition that was signed by the petitioner's president on July 27, 2004 indicates that the petitioner is a mobile diagnostic business with two employees and an estimated gross annual income of \$250,000. The record contains no documentation to demonstrate that the proposed duties of the proffered position entail the level of responsibility of a medical and health services manager/clinical manager, as described in the *Handbook*. For example, the record does not establish that the beneficiary would perform the duties described by counsel on motion, such as "review and analyze hospital manuals, health service agreements, and staffing contracts," "screening and analyzing medical reports, and preparing a constructive summary after extensive analysis and interpretation of medical exams or other diagnostic results," and "management and supervision of patients, hospitals, and physician clients." It is additionally noted that the petitioner's brochure stipulates as follows: "All tests are interpreted by board certified cardiologists." The record, however, does not demonstrate that the beneficiary is a board certified cardiologist. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). The AAO affirms its previous finding that the position is not that of a medical and health services manager. In the context of the petitioner's business operations, the position is more closely aligned with that of a medical records and health information technician.<sup>1</sup> The *Handbook* states:

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<sup>1</sup> In an undated letter, presumably mailed to the petitioner's potential clients, the petitioner's president describes the petitioner's goal as providing patients and healthcare providers with "the highest level of mobile Echocardiography and Vascular Ultrasound available." The petitioner's president goes on to say: "[The petitioner] will provide all the necessary equipment, technician and all we ask of you is to provide the patient." The beneficiary in this case holds a foreign certification as an ultrasound technologist and has completed training in Adult Echocardiography. She also has foreign employment experience as an ultrasound technologist. This evidence suggests that the beneficiary might primarily perform the services of an ultrasound technologist for the petitioner, notwithstanding the job duties described of record. Although the petitioner's organizational chart reflects that it already employs an ultrasound technologist, the record contains no evidence in support of this claim, such as documentation related to that employee's educational

Every time a patient receives health care, a record is maintained of the observations, medical or surgical interventions, and treatment outcomes. This record includes information that the patient provides concerning his or her symptoms and medical history, the results of examinations, reports of x rays and laboratory tests, diagnoses, and treatment plans. Medical records and health information technicians organize and evaluate these records for completeness and accuracy.

Technicians assemble patients' health information. They make sure that patients' initial medical charts are complete, that all forms are completed and properly identified and signed, and that all necessary information is in the computer. They regularly communicate with physicians and other health care professionals to clarify diagnoses or to obtain additional information.

Similarly, in this case, the beneficiary will "manage, coordinate, and supervise the handling of all patient medical requirements, records and service collaterals," "develop and implement an effective communication system between hospitals, insurance companies and other health services providers," and "review and analy[ze] service agreements and arrangements with hospitals and insurance providers."

As discussed above, the petitioner has failed to demonstrate that the proffered position is that of a medical and health services manager. Thus, the record is insufficient to enable the AAO to determine that the proffered position is a specialty occupation. Moreover, the petitioner has failed to provide specific information relating the duties of the proffered position to its business operations and has further failed to substantiate the level of its business operations. Although counsel asserts on motion that that the petitioner's gross annual income has tripled since 2003, counsel submits insufficient evidence in support of this claim. Again, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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).

Accordingly, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(1).

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background. In addition, the pay stubs for that employee are issued by L&P Management Resources LLC, not by the petitioner. Moreover, as noted above, the petitioner's federal income tax returns from 2002 through 2005 reflect no salaries and wages paid. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Regarding parallel positions in the petitioner's industry, on motion counsel submits Internet job postings for the following positions: Director of Therapy Services; Manager, Utilization Management – UM/RN; Health Programs Manager; and Senior Safety & Health Consultant. The postings, however, rely on duties unlike the duties listed by the petitioner, such as administering fiscal operation, directing and coordinating activities of the therapy staff, working with staff and volunteers to implement the American Cancer Society's Mission Delivery message within the Health Programs systems, and conducting risk evaluations for an insurance business. These postings do not indicate that the businesses publishing the advertisements are similar to the petitioner in business activities, size, number of employees, or level of revenue. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

The record does not include any evidence from firms, individuals, or professional associations regarding an industry standard. In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has not submitted sufficient documentation to establish that the duties of the proffered position involve duties that are complex or unique; rather the petitioner has provided a general description of the occupation without identifying any complex or unique tasks pertinent only to the petitioner's business that would elevate the position to one that requires the knowledge associated with a bachelor's degree in a specific discipline. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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 motion, counsel asserts that the educational requirements specified in the petitioner's job posting demonstrate that the petitioner normally requires a bachelor's degree for the proffered position. It is noted, however, that the petitioner's president stated in a letter dated January 4, 2005, that the proffered position is a new position. The AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

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

Counsel states on motion that the proposed duties are the complex duties of a health services coordinator. The petitioner, however, has not established that they exceed in scope, specialization, or complexity those usually performed by a medical records and health information technician, an occupational category that does not

require a baccalaureate or higher degree in a specific specialty.<sup>2</sup> Without a meaningful list of duties related to its specific business operations, the petitioner has not established that the generally described duties are either specialized or complex. Further, as indicated earlier in this decision, the petitioner's unexplained inconsistencies and unsupported claims regarding the basic information of its business do not establish a requirement for the level of knowledge requisite for this criterion. 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 previous decision of the AAO, dated May 30, 2006, is affirmed. The petition is denied.

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<sup>2</sup> The AAO notes that the occupation of ultrasound technologist also does not require a baccalaureate degree in a specialty.