

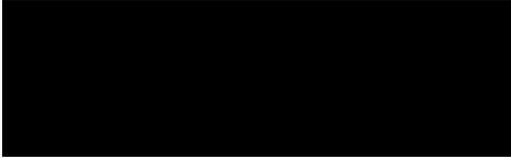


U.S. Citizenship
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FILE: WAC 03 169 50457 Office: CALIFORNIA SERVICE CENTER Date: FEB 07 2005

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:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a medical/surgical center. It seeks to employ the beneficiary as a medical assistant and to classify him 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 ground that the proffered position is not a specialty occupation. On appeal counsel submits a brief arguing that the subject position meets three different criteria set forth in the regulations, 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as 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.

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 request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and counsel's appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner, a self-described medical/surgical center with 15 employees, is seeking the beneficiary's services as a medical assistant. In a letter accompanying the Form I-129 the petitioner described the duties of the position as assisting the surgeon before and after surgery by:

- 1) Conducting laboratory blood tests, making sure that every lab needed for the patient's case is done.
- 2) Requesting radiology scanning tests taking into consideration the type of operation and the patient's disease.
- 3) Requesting and performing electrocardiograms and making sure the patients are well enough to undergo surgery.
- 4) Communicating pre-operative instructions to the patients, including the cessation of some medications and the commencement of others.
- 5) Post-surgical patient care including removal of stitches, evaluating patient progress, and changing dressings on wounds.

According to the petitioner the educational requirement for the position is a college or university degree with a medical background. The beneficiary, a native of Syria, graduated from the University of Aleppo with a Certificate of Doctor of General Medicine in April 2001. In response to the director's RFE the petitioner emphasized that the proffered position fit the description of a medical assistant in the Department of Labor's *Occupational Outlook Handbook (Handbook)* because its duties include taking medical histories and recording vital signs, preparing patients for examination and surgery, assisting the doctor during examination and surgery, drawing blood, preparing patients for tests, and removing sutures.

The director found that the proffered position, consistent with the petitioner's assertion, reflected the duties of a medical assistant as described in the *Handbook*. Based on the *Handbook's* recitation of the educational training options for medical assistants, the director determined that a baccalaureate degree is not the normal, industry-wide minimum for entry into the occupation. The director found that the petitioner did not normally require applicants for the position to have baccalaureate or higher degrees in the field, and that the duties of the position did not indicate a complexity or level of authority beyond that normally encountered in the occupation. The director concluded that the proffered position did not qualify as a specialty occupation under any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered by CIS are whether the *Handbook* indicates a degree is required by the industry; 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. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)). CIS also analyzes the specific duties and

complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

On appeal counsel asserts that the proffered position meets three different regulatory criteria of a specialty occupation, set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), (2), and (4). Counsel's assertions on appeal are not supported by any additional documentation. Mere assertions by counsel, unsupported by documentary evidence, will not satisfy the petitioner's burden of proof. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) because the petitioner's surgical practice is highly specialized, requiring the medical assistant to have the advanced knowledge of a medical school degree. Regardless of the sophistication of the surgery performed by the petitioner, the fact remains that the proffered position is that of a medical assistant. The *Handbook*, 2004-05 edition, at pages 340-41, describes the duties of medical assistants as follows:

Medical assistants perform many administrative duties, including answering telephones, greeting patients, updating and filing patients' medical records, filling out insurance forms, handling correspondence, scheduling appointments, arranging for hospital admission and laboratory services, and handling billing and bookkeeping.

Clinical duties . . . include taking medical histories and recording vital signs, explaining treatment procedures to patients, preparing patients for examination, and assisting the physician during the examination. Medical assistants collect and prepare laboratory specimens or perform basic laboratory tests on the premises, dispose of contaminated supplies, and sterilize medical instruments. They instruct patients about medications and special diets, prepare and administer medications as directed by a physician, authorize drug refills as directed, telephone prescriptions to a pharmacy, draw blood, prepare patients for x-rays, take electrocardiograms, remove sutures, and change dressings.

All of the duties of the proffered position, recounted earlier in this decision, fall within the *Handbook's* description of a medical assistant. None of the duties exceeds the scope of a typical medical assistant. The *Handbook* also clearly states that a baccalaureate degree is not normally required to become a medical assistant. The pertinent language reads as follows:

Most employers prefer graduates of formal programs in medical assisting. Such programs are offered in vocational-technical high schools, postsecondary vocational schools, and community and junior colleges. Postsecondary programs usually last either one year, resulting in a certificate or diploma, or two years, resulting in an associate degree.

Handbook, 2004-05 edition, at page 341. Thus, the record does not establish that a baccalaureate or higher degree is the normal minimum requirement for entry into a medical assistant position. Accordingly, the proffered position does not qualify as a specialty occupation under the first alternative criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Counsel asserts that the proffered position satisfies the alternative criteria of a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4) because the complicated surgical procedures practiced by the petitioner require the beneficiary to have specialized medical knowledge and an advanced education beyond that of normal medical assistants. The petitioner has not submitted persuasive evidence, however, that the proffered position is so complex or unique that it can only be performed by an employee with a baccalaureate or higher degree, or that the duties of the position are so specialized and complex that they require specialized knowledge associated with such a degree. Thus, the proffered position does not meet the alternative criteria cited by counsel under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4) to qualify as a specialty occupation.

The statute requires that the beneficiary be coming temporarily to the United States to perform services in a specialty occupation. *See* section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101 (a)(15)(H)(i)(b). The petitioner has not established that the beneficiary in this case will be performing services in a specialty occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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