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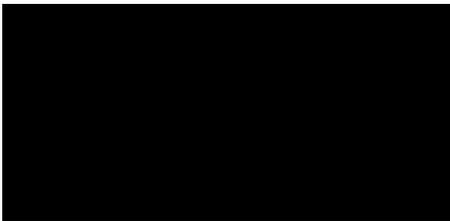
FILE: WAC 02 207 54324 Office: CALIFORNIA SERVICE CENTER Date:

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.

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 provides home health care. It seeks to employ the beneficiary as an administrator medical records/facility. 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. On appeal, counsel submits a brief and additional evidence.

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 additional evidence; (3) the petitioner's response to the director's request; (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 an administrator medical records/facility. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail planning, developing, managing, and administering a health information system for the petitioner's health care facilities; maintaining computerized records of residents; developing and implementing policies and procedures for documenting, storing, and retrieving facility information; monitoring and coordinating medical reports and records of consumers and residents; preparing and analyzing medical documents of consumers/residents; developing and implementing software to computerize the health information system; providing and maintaining medical information and processing it for dissemination to the Chief Facility Administrator, medical providers, relatives, counselors, and licensing personnel; coordinating medical care evaluations with medical staff, and developing guidelines and procedures to disseminate evaluations to consumers, residents, and staff; analyzing consumer and resident data for government agencies and determining appropriate changes and proposed actions on facility planning, utilization management, research, risk management, and quality of care; ensuring that accreditation, and governmental regulations are met, including assisting the Chief Facility Administrator to ensure the facility satisfies regulations; developing reports in compliance with government regulations; conducting programs for direct care staff to comply with continuing education requirements; coordinating in-service training of direct care staff; and designing and implementing in-house programs involving psychometrics for the psychological well-being of developmentally disabled patients and consumers. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in a health field, psychology, or a related field.

The director determined that the proffered position was not a specialty occupation. The director referred to the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)* and stated that the first half of the proposed position paraphrases the definition of a medical records administrator. The director noted that although the petitioner indicated that the beneficiary would not supervise personnel, the petitioner omitted the part of the *DOT's* job description that stated that a medical records administrator job is supervisory in nature. The director found the second part of the proffered position's duties parallel to those of a nurse in a smaller healthcare facility, an occupation that does not require a bachelor's degree in a specific specialty.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel states that the director generalized the beneficiary's duties in the denial letter when, in fact, the response to the request for evidence had comprehensively described the proffered position. Counsel refers to the DOL's *Occupational Outlook Handbook (the Handbook)* to state that the proffered position is similar to a health services manager. Counsel contends that because the petitioner is a small facility, the director's claim that the beneficiary will perform nursing duties is incorrect because these duties actually fall under the petitioner's job description of "coordinating medical care evaluation." Counsel states that the beneficiary's job is complex and unique, requiring a person with a baccalaureate degree. Counsel states that the *DOT* also shows that the proffered position satisfies the criteria of a medical and health services manager.

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 first considers 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In determining 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 baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The director and counsel refer to information in the *DOT*. However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL has replaced the *DOT* with the *Occupational Information Network (O\*Net)*. Both the *DOT* and *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by information in the *DOT*.

The evidentiary record contains discrepancies regarding the beneficiary's duties. The petitioner's June 10, 2002 letter stated the proffered position involved "no patient care." The petitioner claimed that the beneficiary will not be involved in patient care; however, some of the proposed duties do, in fact, involve patient care. For instance, the petitioner states the beneficiary will coordinate "medical care evaluation with medical staff," design and implement in-house programs involving psychometrics for the psychological well-being of developmentally disabled patients/consumers, and:

prepare and analyze medical documents of consumers/residents including but not limited to updates and progresses [sic] of their developmental disabilities and behavioral status.

These duties entail patient care, and are therefore inconsistent with the petitioner's statement that the proposed position will have "no patient care."

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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In spite of the inconsistencies in the record of proceeding, the AAO does not agree with counsel's claim that the proffered position is analogous to an administrator in a small facility, as described in the *Handbook*. According to the *Handbook*, an administrator in a small facility manages personnel, finances, facility operations, admissions, and has a larger role in resident care. Counsel's May 20, 2003 letter indicated that the beneficiary will not supervise employees. The petitioner's job description did not indicate that the beneficiary will manage personnel, finances, or admissions. Further, the petitioner's June 10, 2002 letter stated that the beneficiary will have "no patient care"; thus, the beneficiary will not have a larger role in resident care. Based on the evidence in the record, the proffered position is dissimilar from an administrator in a small facility. The petitioner, therefore, cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

There is no evidence in the record to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Again, the petitioner failed to establish that the duties of the proffered position are performed by an administrator in a small facility. In addition, as already discussed, the discrepancies in the record hinder the AAO from determining what are the beneficiary's actual duties.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner 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 baccalaureate or higher degree in a specific specialty. Once again, the petitioner failed to establish that the proffered position's duties are performed by an administrator in a small facility. Equally important, the inconsistencies in the record make it impossible for the AAO to determine what are the beneficiary's actual duties.

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 AAO notes another discrepancy with the evidence in the record: the petitioner submitted, along with the initial petition, an expired business certificate issued to Silver Star Residential Care, which is not the petitioning entity.

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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.