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MAR 03 2005

FILE: WAC 03 051 50382 Office: CALIFORNIA SERVICE CENTER Date:

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 documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the California 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 healthcare agency, specializing in private nursing and caregiver referrals, with five full-time and four on-call employees. It seeks to hire the beneficiary as a medical records administrator. The director denied the petition because he determined the proffered position did not meet the criteria required for classification as a specialty occupation and the beneficiary was not qualified to perform the duties of 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; (3) the petitioner's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's statement. The AAO reviewed the record in its entirety before reaching its decision.

The initial issue before the AAO is whether the petitioner's 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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) 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 must examine the ultimate employment of the alien. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the duties of the position actually require 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 states that it is seeking the beneficiary's services as a medical records administrator. Evidence of the beneficiary's duties includes: the Form I-129, with a November 28, 2002 letter of support from the petitioner; and the petitioner's August 28, 2003 response to the director's request for evidence.

In its letter of support, the petitioner provided an initial description of the duties of its proffered position, providing greater detail concerning those duties in its response to the director's request for evidence. These duties require the medical records administrator to:

- Plan, develop, and administer health information standards and healthcare-based records of accrediting and regulating agencies, and the requirements of the petitioner's healthcare systems;
- Assume responsibility for the development and implementation of policies and procedures for documenting, storing and retrieving information, and for the processing of medico-legal documents, insurance data, and correspondence requests, in conformance with federal, state, and local statutes;
- Supervise staff, directly or through subordinates, in preparing and analyzing medical documents, documentation procedures and their relevance and usage in rendering medical services or for healthcare research, rehabilitation, and health promotion;
- Spearhead the development and design of computer software for a computerized health information system;
- Coordinate medical care evaluation with medical staff, and develop criteria and methods for such evaluation based on medical records-based information and procedures;
- Develop in-service educational materials and conduct instructional programs for healthcare personnel; and

- Analyze and prepare medical documentation or data for reimbursement, facility planning, quality of patient care, risk management, utilization management, and research.

The AAO notes that the petitioner's August 28, 2003 response to the director's request for evidence also listed duties it had not described at the time of filing, expanding the position's scope to require the beneficiary to:

- Establish work schedules and assignments for the petitioner's healthcare staff;
- Review existing policies and procedures, and interview personnel and patients to evaluate the effectiveness of programs in order to identify problem areas;
- Participate in the recruitment, hiring and performance appraisals of the petitioner's healthcare personnel; and
- Monitor and consolidate the weekly job inputs of the petitioner's personnel for the purposes of budget allocation, capital outlay proposals, and credit and loan applications.

However, the AAO will not consider the above duties in its analysis of the petitioner's proffered position as they appear to materially alter the employment the petitioner described at the time of filing, broadening it to include general management responsibilities for the petitioner's healthcare business. Further, the AAO notes that the above responsibilities appear to overlap with the duties the petitioner has assigned to its health services manager and accountant, as outlined in the job descriptions provided in response to the director's request for evidence.

The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot, therefore, offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a specialty occupation. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). Therefore, for its analysis of the proffered position under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO will rely only on the duties described by the petitioner at the time of filing and the petitioner's further description of these duties in its response to the director's request for evidence.

On appeal, counsel also describes the beneficiary as responsible for duties not identified by the petitioner at the time of filing, specifically that the beneficiary would be responsible for reviewing and analyzing facility standards to determine the level of healthcare being provided. However, on appeal, as when responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority with the organizational hierarchy, or its associated job responsibilities. See *Matter of Michelin Tire Corp.* Accordingly, counsel's statements regarding duties not discussed by the petitioner at the time of filing will not be considered.

To make its determination whether the employment first described by the petitioner qualifies as a specialty occupation, the AAO turns 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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)).

In his denial, the director, relying on the 2000-2001 edition of the DOL *Handbook*, determined that the duties of the proffered position were those of a medical records or health information technician and, therefore, did not require the beneficiary to hold a baccalaureate or higher degree, or its equivalent. Further, he found that the petitioner had also failed to establish its position as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In reaching its own conclusions regarding the degree requirements of the proffered position, the AAO has relied upon the 2004-2005 edition of the *Handbook* and its discussion of the occupations of medical and health services managers, and medical records and health information technicians, the two fields of employment most closely related to the proffered position. The *Handbook* states the following with regard to medical and health services managers, under which it includes the profession of medical records administrator:

Healthcare is a business and, like every other business, it needs good management to keep it running smoothly. The occupation, medical and health services manager, encompasses all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system....

Large facilities usually have several assistant administrators to aid the top administrator and to handle daily decisions. Assistant administrators may direct activities in clinical areas such as nursing, surgery, therapy, medical records, or health information....

Clinical managers have more specific responsibilities than do generalists, and have training or experience in a specific clinical area. For example, directors of physical therapy are experienced physical therapists, and most health information and medical record administrators have a bachelor's degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

With regard to the occupation of medical records and health information technicians, the *Handbook's* description is as follows:

Every time a patient receives healthcare, a record is maintained of the observations, medical or surgical interventions, and treatment outcomes.... Medical records and health information technicians organize and evaluate these records for completeness and accuracy.

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

Technicians also use computer programs to tabulate and analyze data to help improve patient care, to control costs, for use in legal actions, in response to surveys, or for use in research studies....

Medical records and health information technicians' duties vary with the size of the facility. In large to medium-sized facilities, technicians may specialize in one aspect of health information, or supervise health information clerks and transcriptionists while a medical records and health information administrator manages the department.... In small facilities, a credentialed medical records and health information technician sometimes manages the department.

Based on the *Handbook's* description of these two occupations, the AAO finds the proffered position to be most closely aligned to that of medical and health services managers. While there are significant similarities between the two occupations just described, certain duties of the proffered position – the development and implementation of records information standards, the establishment of records policy and procedures, and the coordination with medical staff on the use of medical records in medical evaluations -- elevate it above that of a medical records technician. While the *Handbook* notes that, in smaller healthcare facilities, experienced technicians may manage record-keeping activities and personnel, it does not indicate that such management responsibilities include the structuring and development of these facilities' record-keeping systems and standards, and the coordination of such systems and standards with other healthcare managers. Medical and health services managers in clinical settings, including medical records administrators, are defined, in large part, by these very responsibilities. Accordingly, although the match between the proffered position and the occupation of medical and health services manager is not exact, it is, nevertheless, close enough for the AAO to concur with the petitioner's description of its proffered position as a medical records administrator, identified by the DOL *Handbook* as a medical and health services manager.

As to whether a baccalaureate or higher degree, or its equivalent, is the minimum requirement for employment as a medical and health services manager, the *Handbook* states:

Medical and health services managers must be familiar with management principles and practices. A master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the

standard credential for most generalist positions in this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations....

For clinical department heads, a degree in the appropriate field and work experience may be sufficient for entry....

In that the *Handbook* indicates that individuals who perform the duties of medical or health services managers require at least a baccalaureate degree in a field of study specifically related to the type of employment they seek, the AAO finds that the proffered position to qualify as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) and withdraws the director's finding to the contrary.

The AAO now turns to a consideration of whether the beneficiary whom the petitioner seeks to employ is qualified to perform the duties of the proffered position of a medical records administrator.

In determining whether an alien is qualified to perform the duties of a specialty occupation, CIS looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) – full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In his denial, the director found that the beneficiary had failed to meet any of the preceding criteria and was, therefore, not qualified to perform the duties of a specialty occupation. The AAO will now review the record in light of these same regulatory criteria.

The AAO first considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) and (2) -- whether the beneficiary has a degree required by the specialty occupation from an accredited U.S. college or university, or a foreign degree that has been determined to be the equivalent of a U.S. baccalaureate or higher degree required by the specialty occupation.

While the beneficiary does not hold a U.S. baccalaureate degree from an accredited U.S. college or university in the specialty, the petitioner seeks to establish that she possesses a foreign degree that is the equivalent of a U.S. degree required by the proffered position. To meet its burden of proof, the petitioner, at the time of filing, submitted copies of a translated certificate from the Perpetual Help College of Laguna in Binan, The Philippines identifying the beneficiary as holding a Bachelor of Science in nursing, a transcript detailing the courses taken and credits earned by the beneficiary in satisfying her graduation requirements, and an academic evaluation of the beneficiary's college transcript prepared by Educational Evaluators International, Inc. The evaluation finds the beneficiary to possess the equivalent of a bachelor's of science in nursing from a regionally accredited college or university in the United States.

In response to the director's request for evidence, the petitioner also submitted an additional evaluation, prepared by [REDACTED] of Arizona State University, covering both the beneficiary's education and previous employment. Contrary to the finding of [REDACTED] determined the beneficiary's academic record to be the equivalent of only two years of undergraduate study toward a bachelor's degree from a U.S. institution. This contradiction of the previous evaluator's findings is not addressed in the record before the AAO and casts doubt on the reliability of the academic evaluation prepared by Educational Evaluators International, Inc. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Doubt cast on any aspect of the petitioner's proof may 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. 582, 591-592 (BIA 1988).

In light of [REDACTED] differing evaluation of the beneficiary's academic background, the AAO will discount Education Evaluators International's determination that the beneficiary has the equivalent of a bachelor's degree in nursing. It, therefore, concurs with the director's finding that the petitioner has not established the beneficiary's nursing degree to be at the baccalaureate level. An evaluation by a credentials evaluation organization serves CIS as an advisory opinion only. Where an evaluation is in any way questionable, the AAO may discount it or give it less weight. *Matter of Sea, Inc.* 19 I&N Dec. 817 (Comm. 1988).

The AAO also notes that had the petitioner established the beneficiary as holding a bachelor's degree in nursing, that degree would still not qualify her to perform the duties of the proffered position. In that the proffered position is that of a medical records administrator, a bachelor's degree in nursing does not qualify as a "degree required by the specialty occupation," as specified at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

As discussed in the *Handbook*, most medical records administrators, as medical and health services managers, must be familiar with management principles and practices, and normally hold baccalaureate or higher degrees in health information or medical records administration. As the petitioner has successfully established its position as a medical records administrator, a nursing degree does not constitute a degree required by a position requiring expertise in establishing and managing medical records and information systems.

On appeal, counsel contends that a baccalaureate degree in nursing is required to perform the duties of the proffered position because the beneficiary must review the medical records of patients to “see if the diagnoses, treatment plans, and medication are properly done and administered” and “will help the organization review the health care systems currently in place to improve the conduct of providing services to its patients most of whom are elderly and downtrodden with physical or psychological illnesses.” However, these responsibilities were not included among the duties described by the petitioner at the time of filing and, as already discussed, cannot be offered by counsel on appeal to tailor the petitioner’s position to the beneficiary’s educational background. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position’s title, its level of authority within the organizational hierarchy, or the associated job responsibilities. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). Further, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

In that the beneficiary holds neither a U.S. degree required by the specialty occupation, nor a foreign degree that is the equivalent of a U.S. baccalaureate or higher degree required by the specialty, the AAO concludes that the petitioner has failed to establish that the beneficiary meets either of the first two criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO next turns to the third criterion – whether the beneficiary holds a license to practice in the proffered position. While the director’s denial notes that the beneficiary does not possess a license to perform the duties of the occupation, the AAO’s review of the *Handbook* finds no requirement that an individual working as a medical records administrator be licensed or certified. Accordingly, the petitioner cannot establish the beneficiary’s eligibility to perform the duties of a specialty occupation based on the beneficiary’s possession of a license or certification.

Finally, the AAO considers the fourth criterion -- whether the beneficiary has the education, specialized training, and/or progressively responsible experience that would be the equivalent of a U.S. baccalaureate or higher degree in the specialty occupation and whether her expertise in the specialty has been recognized through progressively responsible positions directly related to the specialty.

When a beneficiary is determined to lack the specific degree required by a specialty occupation, the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D) to determine whether the individual may still qualify to perform the proffered position. A beneficiary who does not have a degree in the specific specialty may still qualify for an H-1B nonimmigrant based on:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

In response to the director's request for evidence, the petitioner submitted documentation that responds to the first of the criteria just noted -- an evaluation of the beneficiary's academic background and experience provided by [REDACTED] an assistant professor in the School of Health Administration & Policy, College of Business, Arizona State University. However, the evaluation submitted by [REDACTED] does not satisfy the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) for several reasons.

While the petitioner stated that [REDACTED] evaluation of the beneficiary's academic and employment background was performed on behalf of Morningside Evaluations and Consulting, there is no accompanying documentation from Morningside to establish this affiliation. Further, although [REDACTED] evaluation occasionally references Morningside, his evaluation is presented on the letterhead of Arizona State University and does not specifically state his review of the beneficiary's educational and employment background is conducted on behalf of Morningside. Additionally, the AAO notes that [REDACTED] claims no connection with Morningside Evaluations under the professional affiliations and activities he lists in his resume. As a result, the AAO will not accept the evaluation prepared by [REDACTED] being submitted by Morningside. Further, even if [REDACTED] relationship to Morningside Evaluations had been established, the AAO could not have accepted Morningside's academic evaluation of the beneficiary's work experience. An academic evaluation service is limited solely to the assessment of foreign academic credentials. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Finally, while [REDACTED] opinion of the beneficiary's employment experience is relevant to this proceeding, there is no independent evidence in the record of his stated authority to grant college-level credit for work

experience, nor that Arizona State University has a program that grants college-level credit based on foreign educational credentials, training and/or employment experience. In the absence of a letter from someone in a position of authority at the University supporting [REDACTED] assertions, his evaluation cannot serve as evidence that the beneficiary has the equivalent of a U.S. degree as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

As the record contains no other evidence to meet the evidentiary requirements of the first four criteria, the AAO turns to an analysis of whether the beneficiary can meet the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – the beneficiary has acquired the equivalent of a degree in the specialty occupation through a combination of education, specialized training and/or work experience in areas related to the specialty and has achieved recognition of her expertise in the specialty occupation as a result of such training and experience.

When evaluating a beneficiary's qualifications under this fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

As the petitioner noted in its response to the director's request for evidence, the beneficiary has a number of years of work experience. However, to qualify the beneficiary under the fifth criterion, that experience must have included the theoretical and practical application of specialized knowledge required by the specialty occupation. In the instant case, however, the beneficiary's employment experience has been as a nurse caring for patients, a pharmaceutical company representative, and the manager of a health-related business and pharmacy. There is nothing in her employment history, as described in the record, that appears to qualify as experience that has included the theoretical and practical application of the specialized knowledge required to perform the duties of a medical records administrator. Such experience cannot, therefore, be used to assist the beneficiary in establishing a degree equivalency. Further, the AAO finds nothing in the record to establish that the beneficiary's work experience was gained while working with peers, supervisors or subordinates who have degrees or the equivalent in the administration of medical records; or resulted in any recognition of her expertise in the field of medical records administration. Accordingly, the AAO finds that the petitioner has failed to establish that the beneficiary has the equivalent of a degree required by the proffered position based on her education, specialized training, and/or work experience in areas related to the management of medical records.

For reasons related in the preceding discussion, the petitioner, although it has successfully established its proffered position as a specialty occupation, has failed to prove that the beneficiary is qualified to perform the duties of that occupation. Accordingly, the AAO, although it has withdrawn the director's finding regarding the nature of the proffered position, 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.