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**U.S. Citizenship
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Services**

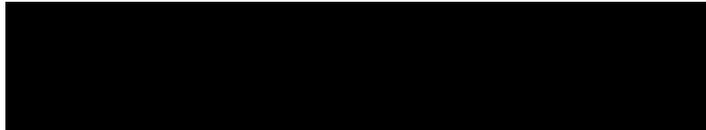
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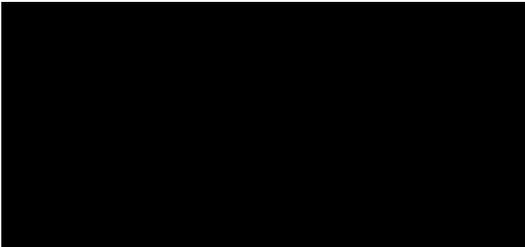
FILE: WAC 02 227 51828 Office: CALIFORNIA SERVICE CENTER Date: NOV 01 2005

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

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 The director's decision is withdrawn and the petition remanded for entry of a new decision.

The petitioner is a general pediatrics clinic that seeks to employ the beneficiary as a medical writer/researcher. 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.

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 a medical writer/researcher. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's responses to the director's requests for evidence. According to this evidence, the beneficiary would perform duties that entail writing reports to Medicare, Medi-cal, physicians, and insurance companies in order to collect funds; providing a complete analysis of patients' injuries based on the physicians' reports, and the patient's medical history and laboratory results; keeping current on medical research results and using the medical library to perform the research necessary to make prognoses on cases. Working with physicians and staff, the beneficiary will analyze the medical significance of ailments and injuries; provide prognoses and advise (if necessary) treatment programs to the physicians based on research; use medical journals, text books, and medical research materials to obtain the analyses and evaluations of patients' conditions. The petitioner's responses to the requests for evidence elaborated on the proposed duties. The petitioner requires a baccalaureate degree in medicine for the proposed position; and according to the petitioner, the beneficiary does not require licensure to practice medicine as the beneficiary will not serve as a physician or perform direct patient care.

The director stated that the proposed duties resemble those of a medical writer as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*); nevertheless, because the director found it unusual for a health clinic such as the petitioner to employ a medical writer, the director concluded that the proposed position differs from a medical writer. Neither the job postings nor counsel's assertions about the complexity and uniqueness of the proposed position persuaded the director to find that the proposed position qualifies as a specialty occupation. Referring to the *Handbook*, the director stated that it reveals that the proposed position resembles a medical secretary/administrative assistant, and that those occupations do not require a baccalaureate degree in a specific specialty. The director noted that the proposed position is newly created.

On appeal, counsel states that the AAO had previously found a similar position to be a specialty occupation, and that the AAO has consistently found a medical research assistant is a specialty occupation.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO does not concur with counsel that the proposed position parallels a medical researcher as that occupation is depicted in the case submitted on appeal, WAC-00-062-51661, as the proposed position does not involve performing laboratory tests and experiments; performing a retrospective study on hypertensive patients using physical and echocardiographic findings to evaluate hypertensive heart disease; or obtaining the results of body fluid and blood and spinal fluid. The AAO also observes that no evidence in the record supports counsel's assertion that the proposed position resembles a medical research assistant. The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS vs. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec.

503 (BIA 1980). In addition, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The AAO finds that the petitioner satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The proposed duty of providing a prognoses and advising (if necessary) treatment programs to physicians based on research, and using medical journals, text books, and medical research materials to “obtain the analyses and evaluation of patients’ conditions,” resemble those of a physician, particularly a general pediatrician, as that occupation is delineated in the *Handbook*. The *Handbook* states the following about this occupation:

Physicians and surgeons serve a fundamental role in our society and have an effect upon all our lives. They diagnose illnesses and prescribe and administer treatment for people suffering from injury or disease. Physicians examine patients, obtain medical histories, and order, perform, and interpret diagnostic tests. They counsel patients on diet, hygiene, and preventive healthcare.

...

General pediatricians. Providing care from birth to early adulthood, pediatricians are concerned with the health of infants, children, and teenagers. They specialize in the diagnosis and treatment of a variety of ailments specific to young people and track their patients’ growth to adulthood. Like most physicians, pediatricians work with different healthcare workers, such as nurses and other physicians, to assess and treat children with various ailments, such as muscular dystrophy. Most of the work of pediatricians, however, involves treating day-to-day illnesses that are common to children—minor injuries, infectious diseases, and immunizations—much as a general practitioner treats adults. Some pediatricians specialize in serious medical conditions and pediatric surgery, treating autoimmune disorders or serious chronic ailments.

The *Handbook* reports that all physicians require licensure, and that to be licensed, “physicians must graduate from an accredited medical school, pass a licensing examination, and complete 1 to 7 years of graduate medical education.”

The petition may not be approved, however, as no evidence contained in the record demonstrates that the beneficiary is qualified to perform the duties of the specialty occupation - a physician, including licensure under the laws of California. Additionally, no evidence in the record indicates that the beneficiary is admissible under Section 212(a)(5)(B) of the Act, 8 U.S.C. §1182(a)(5)(B), which requires the petitioner to demonstrate that the alien in this case has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services), and that she is competent in oral and written English. The director must afford the petitioner reasonable time

to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of a physician, and any other evidence the director may deem necessary. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361.

ORDER: The director's June 24, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.