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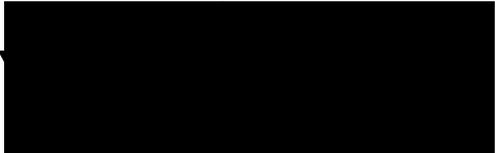
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FILE: WAC 04 059 52225 Office: CALIFORNIA SERVICE CENTER Date: OCT 04 2018

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 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 primary care and family medical services provider. It seeks to employ the beneficiary as a health services manager and to classify her 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.

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.

As provided in 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 director's decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

On Form I-129 and in an accompanying letter the petitioner described itself as an organization that provides information about professional medical services to patients, primarily focused on primary care and family medical services. The petitioner indicated that it was established in 1994, had three employees and gross annual income of \$455,000 at the time of filing, and needed to hire the beneficiary as a health services manager in a part-time capacity (30 hours/week) to support its clinical studies and clinical services. The duties of the position were described by the petitioner as follows:

[The beneficiary] will . . . plan, organize, coordinate and supervise the delivery of health care to our current patents, and extended community. In addition, she will work closely with the [owner] for the development, implementation and funding of clinical investigations at our clinic. Work closely with the physician owners for clinical and program development. She will oversee personnel matters, billing and collection, budgeting, planning, equipment outlays and patient flow. Assist in referrals to coordinated care professionals for anti-aging and wellness care. Assist our physician staff in the development of a newsletter for patient, community and eventually electronic dissemination.

The petitioner stated that the beneficiary was qualified for the position by virtue of her doctor of dental medicine degree in April 1996 from Manila Central University in the Philippines.

In response to the RFE the petitioner provided additional information about the proffered position by submitting a more detailed list of the duties, as well as the percentage of time required by the various duty categories. See Exhibit A of the response. The list of duties in Exhibit A is incorporated by reference into this decision, and the percentage of time required by each duty category was estimated as follows:

- 35% Direct work with patients (review of charts, referrals, etc.).
- 20% Coordination and interaction with health care providers.
- 20% Coordination of all aspects of clinical trials.
- 10% Newsletter activities.
- 10% Billing, insurance, Medicare and Medical functions.
- 5% All other.

The director denied the petition on the ground that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director quoted excerpts from the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* describing the occupation of medical and health services managers and concluded, based on the evidence of record, that the primary duties of the proffered position were not those of a health services manager. The director determined that the duties of the proffered position reflected those of an office manager, administrative assistant, or administrative services manager – occupations which do not require a baccalaureate or higher degree in a specific specialty. The petitioner's business did not have the operational scale or complexity that would require the services of a health services manager, the director continued, and the record did not

show that the duties of the proffered position were so specialized and complex that they required knowledge at the level of a baccalaureate or higher degree. The two job announcements in the record for health services managers did not establish that a degree requirement is common to the industry in parallel positions among similar organizations, the director stated, and no evidence was submitted that the petitioner had in the past required a baccalaureate or higher degree in a specific specialty for the position.

On appeal counsel asserts that the evidence of record establishes the petitioner's need for the services of a health services manager, and submits evidence that the California Service Center has twice in recent years approved H-1B petitions for health services manager positions with the same duties as those of the proffered position, one of which was filed by the instant petitioner for a prior beneficiary in the proffered position. Counsel contends that the duties of the proffered position are sufficiently complex to require a bachelor's degree. Since the DOL *Handbook* indicates that a baccalaureate or higher degree in a specialty field is required for entry into a health services manager position, counsel maintains that the proffered position qualifies as a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered 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. Sava*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). 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, Inc. v. Reno, id.*, at 1165-66.

The AAO does not agree with counsel's assertion that the proffered position is that of a health services manager, as described in the DOL *Handbook*. The occupational category of medical and health services managers is described in the *Handbook*, in pertinent part, as follows:

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.

. . . . Future medical and health services managers must be prepared to deal with evolving integrated healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring at work, and an increased focus on preventive care. They will be called upon to improve efficiency in healthcare facilities and the quality of the healthcare provided

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

In smaller facilities, top administrators handle more of the details of daily operations. For example, many nursing home administrators manage personnel, finance, facility operations, and admissions, and have a larger role in resident care

A small group of 10 to 15 physicians might employ one administrator to oversee personnel matters, billing and collection, budgeting, planning, equipment outlays, and patient flow. A large practice of 40 to 50 physicians may have a chief administrator and several assistants, each responsible for different areas.

Handbook, 2004-05 edition, at 55-56. The foregoing description of a health services manager does not accord with the proffered position at issue in this petition. Medical and health services managers, including specialists in charge of specific clinical departments or services and generalists who manage or help to manage an entire facility or system, are employed by larger organizations than the petitioner. Even smaller employers of health services managers like those cited in the *Handbook* (smaller facilities and medical practices of 10-15 physicians) exceed in size and scale of operations the petitioner's one-physician practice. More importantly, it is unclear from the duties of the proffered position, as described by the petitioner, whether much, if any, specialized knowledge in the field of health or medicine is required.

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are crucial, not the title of the position. The petitioner must show that the performance demands of the position compel its degree requirement. The critical issue is not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

The AAO is not persuaded by the evidence of record that the beneficiary would be performing the services of a health services manager in the proffered position, or that the position requires the job seeker to have a baccalaureate or higher degree in a specific specialty. In accord with the director's decision, the AAO determines that the duties of the proffered position reflect the duties of an administrative assistant, as described in the DOL *Handbook*, 2004-05 edition, at 469-70. The *Handbook* summarizes the "core responsibilities" of administrative assistants as "performing and coordinating an office's administrative activities, and storing, retrieving, and integrating information for dissemination to staff and clients." *Handbook* at 469. The duties of the occupation are described more specifically as follows:

. . . [A]dministrative assistants are responsible for a variety of administrative and clerical duties necessary to run an organization efficiently. They serve as an information manager for an office, plan and schedule meetings and appointments, organize and maintain paper and electronic files, manage projects, conduct research, and provide information by using the telephone, postal mail, and e-mail

Specific job duties vary with experience and titles In addition to arranging conference calls and scheduling meetings, they may handle more complex responsibilities such as conducting research, preparing statistical reports, training employees, and supervising other clerical staff.

Some . . . administrative assistants, such as legal and medical secretaries, perform highly specialized work requiring knowledge of technical terminology and procedures *Medical secretaries* transcribe dictation, prepare correspondence, and assist physicians or medical scientists with reports, speeches, articles and conference proceedings. They also record simple medical histories, arrange for patients to be hospitalized, and order supplies. Most medical secretaries need to be familiar with insurance rules, billing practices, and hospital or laboratory procedures

Handbook at 470. As for the educational requirements of administrative assistants, the *Handbook* indicates that a high school degree may be sufficient for an entry-level position, but that additional training and education is becoming increasingly important to acquire the skills needed for the modern workplace. As explained in the *Handbook, id.*, at 470-71:

. . . [A]dministrative assistants acquire skills in various ways. Training ranges from high school vocational education programs that teach office skills and keyboarding to 1- and 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges Specialized training programs are available for students planning to become medical or legal secretaries or administrative technology specialists. Bachelor's degrees and professional certifications are becoming increasingly important as business continues to become more global.

Thus, the *Handbook* clearly indicates that a bachelor's degree in a specific specialty, or its equivalent, is not the normal minimum requirement for entry into an administrative assistant position. While bachelor's degrees are "becoming increasingly important," many other educational avenues are available to become an administrative assistant, even one with advanced responsibilities, including sub-baccalaureate training programs in business schools, vocational-technical institutes, and community colleges. Accordingly, the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes job announcements for a director of clinical programs and a medical services director which require applicants to have a bachelor's degree in a specialty field. One of the announcements is from a county government, however, and the other appears to be from a health maintenance organization (HMO). The petitioner bears no similarity to either of these organizations with respect to its size, scale of operations, and line of business. Thus, the job announcements are not persuasive evidence that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record demonstrate that the proffered position is so complex or unique that it can only be performed by an individual with a specialty degree, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With regard to the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – "The employer normally requires a degree or its equivalent for the position" – counsel has submitted evidence of a previous approval by the California Service Center of an H-1B petition for the same

position at issue in this petition, in which the beneficiary had a baccalaureate degree in a specialty field. Counsel asserts that this approval (as well as another approval for a similar health services manager position by another company) should govern the decision in the instant petition. The AAO does not agree. The pertinent documentation does not show that either employer made a baccalaureate degree in a specialty field a requirement for the position. Furthermore, CIS is not required to approve a petition when eligibility has not been demonstrated – as in the instant case – merely because of a prior approval that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). 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 petitioner's record of proceeding. *See* 8 C.F.R. § 103.2 (b)(16)(ii). Moreover, the AAO is never bound by a decision issued by a service center or a district director. *See Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Only published precedent decisions are binding on all CIS employees in the administration of the Act. *See* 8 C.F.R. § 103.3(c). The AAO determines that the documentation of record does not establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not show that the duties of the position are so specialized and complex that they require baccalaureate level knowledge or higher in a specific specialty. The position is that of an administrative assistant, as described in the *Handbook*, and can be performed by an individual without baccalaureate level knowledge in a specialty.

For the reasons discussed above, the record fails to demonstrate that the proffered position meets any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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.