

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

*D2*

FILE: WAC 03 141 50129 Office: CALIFORNIA SERVICE CENTER Date: **SEP 20 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 service center director 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 residential care facility that seeks to employ the beneficiary as its medical records administrator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and supporting documents.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (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.

The record of proceeding before the AAO contains, in part: (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 records administrator. The petitioner indicated in its initial letter that it wished to hire the beneficiary because she satisfactorily meets the required educational qualifications and professional experience required to perform the job of medical records administrator, which it indicated as having a bachelor's degree in the medical field. The petitioner stated the

beneficiary has the required bachelor's degree and work experience appropriate in performing the job duties. In response to the director's request for evidence, counsel stated that the proffered position was not a nursing home administrator but similar to that of the description of a medical and health service manager as described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The *Handbook* describes medical and health service managers 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. . . .

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.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education was found to be the equivalent to the U.S degree of Bachelor of Science in Physical Therapy. The director found that there was no information in the record to establish that the beneficiary has knowledge or experience in management principles as stated in the *Handbook*. The director found that the record did not establish that the beneficiary has experience in health information or as a medical records administrator, which relates to the duties of the proffered position.

On appeal, counsel states the beneficiary has a degree in physical therapy and has been found to be qualified for the position by the petitioner. Counsel contends that that "although candidates in possession of degrees dealing with management principles and practices may qualify for the position, those who have completed at least bachelor's degrees in health science field, such as the beneficiary, who possesses a degree in physical therapy and has sufficient familiarity with administration practices, are also considered eligible for the proffered position and thus, H-1B classification."

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation as a health services manager in a medical records administrator position that usually requires a bachelor's degree in health information or medical records administration. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in the field of study required by the specialty occupation.

The record reflects that the beneficiary obtained the equivalent of a bachelor's degree in physical therapy from an accredited university in the United States.

The *Handbook* states that the following about training and education for medical and health service managers who are charged with administering records departments:

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 (Emphasis added).

The *Handbook* indicates the following about training and education for Medical Records Administrator:

[I]n larger institutions, the director is usually an administrator, with a bachelor's degree in medical records and health information administration.

While counsel contends that the *Handbook* also indicates that the beneficiary is qualified as a medical and health services manager by virtue of her four year degree in a life science, physical therapy, that position is not supported in this case, as the petitioner is seeking to place the beneficiary in a position as a medical records administrator.

The record does not reflect that the petitioner has met the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and has not established that the beneficiary has the equivalent of a bachelor's degree in the specific specialty required by the specialty occupation. The beneficiary's university records indicated that the course of study was focused on physical therapy. Finally, the petitioner indicated that the beneficiary has been employed as a physical therapist.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of medical and health service manager who is performing the services of a medical records administrator. Accordingly, the AAO shall not disturb the director's denial of the petition.

The director also found that the position was a health services manager. The AAO disagrees. The AAO does not find that the proffered position is a medical and health services manager and does not find that the position is 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 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 its medical records administrator. Evidence of the beneficiary’s duties includes: the I-129 petition; the petitioner’s letter in support of the petition. According to this evidence, the beneficiary would perform duties that entail: maintaining all medical records of patients, accurately coding and documenting their diseases, conditions and treatments pursuant to the International Classifications of Diseases (ICD-9) (20% of time); implementing clinical data validation measures and analyze abnormal findings, medications and surgical procedures (15% of time); implementing the petitioner’s health information systems and record keeping procedures that will provide quick data storage (15% of time); as custodian of confidential patient information, approving release of medical records submitted to the department (10% of time); acting as secondary source of information on coding system regulations and any changes made by official agencies that affect coding information policies; serving as resources staff to other staff on legal issues regarding health information (10% of time); constantly reviewing diagnostic and procedural codes on all clinical data such as diseases, therapies, surgeries, laboratory tests, pharmaceuticals, treatments, making sure that the petitioner is using the most current ICD-9 diagnostic codes (5% of time); requiring coders, transcribers and other medical record-keeping personnel to adhere to accuracy of information, concentration and close attention to detail (5% of time); contacting Medicare, Medicaid, Medi-Cal, health insurance firms and health maintenance organizations (HMOs) on matters pertaining to reimbursement regulations and clarify codes, which are unclear to the payors (5% of time); resolving consumer concerns/problems relating to record keeping policies of the petitioner (5% of time); implementing rules on close confidentiality of medical records and that patient/resident privacy rights are strictly protected (5% of time); and analyzing patient data for reimbursement, laboratory planning, quality of patient care, risk management, utilization management and research (5% of time).

Upon review of the records, the AAO finds that proffered position is not a specialty occupation because the duties reflect those of a medical records and health information technician. 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 turns first 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; 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 872, 1102 (S.D.N.Y. 1989)).

The proffered position is similar to that of a medical records and health information technician. The *Handbook* indicates that medical records and health information technicians organize and evaluate medical records for completeness and accuracy. They assign a code to each diagnosis and procedure. They consult classification manuals and also rely on their knowledge of disease processes. Technicians then use computer software to assign the patient to one of several hundred "diagnosis-related groups," or DRGs. The DRG determines the amount for which the hospital will be reimbursed if the patient is covered by Medicare or other insurance programs using the DRG system. The *Handbook* indicates 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. The *Handbook* further notes that 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. Finally, the *Handbook* indicates in small facilities, a credentialed medical records and health information technician manages the department.

In its *Handbook*, 2004-2005 edition, the DOL states the following about the training and educational requirements for medical records and health information technician positions:

Medical records and health information technicians entering the field usually have an associate's degree from a community or junior college. In addition to general education, course work includes medical terminology, anatomy and physiology, legal aspects of health information, coding and abstraction of data, statistics, database management, quality improvement methods, and computer science.

Experienced medical records and health information technicians usually advance in one of two ways – by specializing or managing. Senior technicians with RHIT credentials may become director or assistant director of a medical and health information department in a small facility. . . . In larger institutions, the director is usually an administrator with a bachelor's degree in medical records and health information administration.

The proffered position resembles a medical records and health information technician. As the *Handbook* does not indicate that a bachelor's degree or its equivalent is required as a minimum for entry into the occupation, the petitioner has not established the first criterion. Additionally, according to the *California Occupational Guide* (the *Guide*) the State of California requires certification for those technicians who actually manage medical record departments. Furthermore, the *Guide* notes that Medical Record Administrators must be certified as registered record administrators (RRAs) by the American Health Information Management Association or already be certified Accredited Record Technicians.

The record does not include any information regarding parallel positions in the petitioner's industry. The record also does not include any evidence from professional associations regarding an industry standard. In addition, no documentation to support the complexity or uniqueness of the proffered position was submitted. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, neither the petitioner nor counsel addresses this criterion. Therefore, the petitioner has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The duties are those routinely performed by medical records and health information technicians in the industry. The duties described do not reflect those of an administrator of a medical records department in a large institution. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 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.