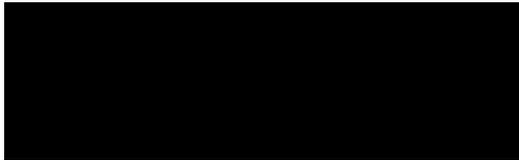




U.S. Citizenship  
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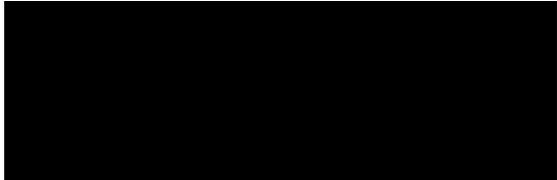


FILE: WAC 04 221 54362 Office: CALIFORNIA SERVICE CENTER Date: APR 26 2006

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 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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the petition remanded for entry of a new decision.

The petitioner is an outpatient clinic and provider of physical, occupational, and speech therapy. It seeks to employ the beneficiary as a medical research assistant. The petitioner 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 does not qualify as a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 are 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) the 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) the Form I-290B with 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 research assistant. Evidence of the beneficiary's duties was included with the Form I-129 petition and in response to the director's request for evidence. According to this evidence the beneficiary would:

- Review major professional medical journals for health issues and developments that are particularly relevant to patients and clients - Based on research the beneficiary will help interpret and implement quality assurance standards in the clinic to ensure quality care by coordinating activities of clinical, clerical, and the rest of the rehabilitative personnel. The beneficiary will also establish work schedules and assignments for the health care staff and assist in the coordination of quality assurance for health agency contracts;
- Review medical records and patient profiles, and discuss those profiles, deficiencies and inconsistencies with supervising clinicians - Review quality assurance standards, scrutinize existing policies and procedures, and interview clinical staff to evaluate the effectiveness of the quality assurance program in order to identify problem areas and recommend remedial action;
- Research medical literature to find suggestions of modes of treatment or possible diagnoses for unusual cases, develop treatment procedures for medical application, and recommend test methods to referring physicians based on research that generate the most effective treatment approach for a specific diagnosis or condition - Develop and expand rehabilitative care programs and services for research, rehabilitation, and holistic health promotion by keeping abreast of technological advances in rehabilitative care machination, and represent the petitioner in conferences, trainings, seminars, forums pertaining to medical research, quality assurance, health management and related issues;
- Suggest to affiliated clinicians test methods for diagnosis or medical procedures for treatment approaches for specific diagnoses or conditions based on research studies - Contribute to a team effort to ensure that rehabilitative care innovations are given to patients, and document apparent

disease patterns to assist physicians in devising treatment regimens consistent with studies and research conducted;

- Analyze data, prepare reports and present findings for possible application to healthcare provider programs, and present study results to physicians, the community, and insurance carriers to justify treatment methods - Develop and expand rehabilitation programs and services, and review and inspect facilities for emergency readiness and regulation compliance recommending structure or equipment modification;
- Plan design of research studies and data collection, and recommend criteria for quality assurance and treatment protocols - Develop organizational policies and procedures and establish criteria for the outpatient rehabilitation clinic, and coordinate care plans, clinical notes and other rehabilitation services notes to ensure that patient evaluations, clinical goals, treatment, patient response, and recommended course of treatment at discharge are reflected on patient discharge summaries; and
- Supervise the activities of clinical, statistical, clerical and other medical research personnel - Participate in the recruitment, hiring and performance appraisals of healthcare personnel/staff.

The petitioner requires a minimum of a bachelor's degree in a medical field for entry into the proffered position.

CIS often looks to the Department of Labor's *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. The petitioner and the director conclude that the duties of the offered position are those of a medical research assistant as listed under "medical writer/researcher" in the *Handbook*. The AAO does not agree. The referenced section of the *Handbook* notes that medical writers prepare a range of formal documents presenting detailed information on the physical and biological sciences. They convey research findings to the scientific and medical professions. Many work with researchers on technical subjects to prepare written interpretations of data and other information for a general readership. The duties to be performed by the beneficiary are neither those of a medical writer, or a medical research assistant. The petitioner noted in its letter of September 13, 2004, that the offered position is based on the demands of its insurance carriers and contracts. The petitioner expresses a need for an employee to be able to understand medical terminology and written documentation, gather and collate medical data, and compare it with existing norms. The beneficiary would then collect and analyze data using statistical formulas, and present that data to medical facilities, physicians, insurance carriers and other contracting parties to improve care quality and provide justification for services provided, including the frequency of intervention. This would require monitoring and tracking of staff documentation and patient outcomes to ensure that they fall within standard norms for patient diagnosis and conditions. The beneficiary would assist the Quality Assurance (QA) manager in providing quality assurance to verify completeness of reports to determine appropriate treatment methods and the frequency of treatment. The petitioner notes that insurance carriers and HMO contracts provide clients but want a statistical history to justify clinical pathways for diagnosis and payment. The petitioner states that many of the duties to be performed are essentially those of a quality assurance assistant with additional managerial responsibilities.

In addition to the above mentioned responsibilities, the beneficiary would also research medical literature to find suggestions of modes of treatment or possible diagnoses for unusual cases, develop treatment procedures for medical application, and recommend test methods to referring physicians based on research that generates the most effective treatment approach for a specific diagnosis or condition. She would suggest to clinicians test methods for diagnosis or medical procedures for treatment approaches for specific diagnoses or conditions based on research studies. These are duties similar to those typically performed by physician's assistants (PA). The *Handbook* describes a PA as follows: "working as members of the health care team, they take medical histories, examine and treat patients, order and interpret laboratory tests and x rays, and make diagnoses," According to the *Handbook*, all states require that PA's complete an accredited, formal education program and pass a national exam to obtain a license. Based on the *Handbook's* information and submitted evidence, the AAO finds that the proffered position qualifies as a specialty occupation in that the duties of the position are so specialized and complex that knowledge required to perform the duties is usually associated with a baccalaureate or higher degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The final issue to be determined is whether the beneficiary is qualified to perform the duties of the offered specialty occupation. As noted in the *Handbook* PA's provide healthcare services under the supervision of physicians and must be licensed. This matter will be remanded to the director to determine if the beneficiary, who would be employed in an outpatient clinic that provides physical, occupational, and speech therapy, would work under the supervision of a physician and whether she is appropriately licensed to work as a PA. The record does not establish that the petitioner has a medical doctor on staff. It is noted, however, that the beneficiary would work with referring physicians in the treatment of patients and diagnosis of medical conditions. The director must afford the petitioner reasonable time to provide evidence pertinent to these issues, and may request such additional evidence as he deems appropriate in rendering his decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion. The director shall certify the matter to the AAO should his determination be adverse to the petitioner.