

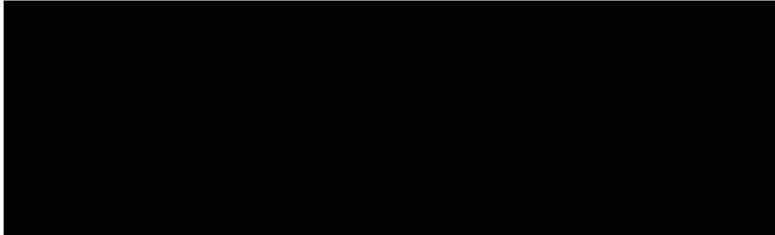
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: EAC 04 266 53276 Office: VERMONT SERVICE CENTER Date: JUN 02 2006

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:

SELF-REPRESENTED

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.

for Michael T. Kelly
Robert P. Wiemann, Chief
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 medical practice that seeks to employ the beneficiary as a medical secretary 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 basis that the position is not a specialty occupation. On appeal, the petitioner submits a letter.

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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

The record of proceeding before the AAO contains, in part: (1) Form I-129 with supporting documents including the petitioner's company support letter; (2) the director's denial letter; and (3) Form I-290B with accompanying letter. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a medical secretary. Evidence of the beneficiary's duties includes: the Form I-129 and the petitioner's letter on appeal. According to this evidence, the beneficiary

would perform duties that entail: patient scheduling; accounting; purchasing; communicating in Korean and English between the doctor and her patients; communicating with insurance companies, pharmaceutical companies, marketing people, and sales people; and medical billing. The petitioner stated that the position requires the beneficiary to have a bachelor's degree.

The director concluded that the evidence provided did not establish that the proposed duties were so complex, specialized, or unique as to require a four-year bachelor's degree in a specific specialty. The director also found that being fluent in both English and Korean was sufficient to fulfill the duty of translating between the doctor and her patients and that this duty did not require a bachelor's degree in a foreign language.

On appeal, the petitioner asserts that the job entails receptionist, billing, marketing, and accounting duties. The petitioner asserts that the maturity to deal with all these duties comes only with the attainment of a bachelor's degree.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review, the AAO concludes that the petitioner has failed to establish that its proposed medical secretary position meets any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* in its consideration of whether or not a position is a specialty occupation and for the *Handbook's* information about the duties and educational requirements of particular occupations. Based on a thorough review of the petitioner's position description and the *Handbook*, the AAO finds that the proposed position most resembles the position of a medical secretary at a solo medical practice. According to the *Handbook*, medical secretaries record simple medical histories, arrange for patients to be hospitalized, order supplies, and need to be familiar with insurance rules, billing practices, and hospital or laboratory procedures.

To determine whether the position is a specialty occupation, the AAO first turns to the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) - a bachelor's or higher degree or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the particular position. The AAO looks at the *Handbook's* discussion of the educational requirements for medical secretaries to determine whether or not the petitioner has established this criterion. A review in the *Handbook* of the educational requirements for medical secretaries reveals the following:

High school graduates who have basic office skills may qualify for entry-level secretarial positions. However, employers increasingly require extensive knowledge of software applications, such as word processing, spreadsheets, and database management.

The *Handbook* indicates that jobs in these areas do not require bachelor's degrees for entry into the field. As no specific course of study is required for entry into these occupations and those without bachelor's degrees can fill the positions, the petitioner fails to establish that a bachelor's or higher degree in a specific field of

study is the normal minimum requirement for entry into the proposed position. Thus, the petitioner has failed to establish that the position is one that qualifies as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO turns to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies “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)). The petitioner has not submitted evidence in regards to this criterion. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – the employer normally requires at least a bachelor’s degree or its equivalent, in a specific field of study, for the position. As previously stated, CIS interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any bachelor’s or higher degree, but one which is *in a specific specialty* that is directly related to the proposed position. The petitioner indicates that it requires a bachelor’s degree, but admits that the degree need not be in any particular field of study. This educational requirement is not enough to establish that the proposed position qualifies as a specialty occupation, as the requirement must be for a specific bachelor’s degree directly related to the proposed position. In this case, it means a requirement for a bachelor’s degree or higher in health services administration or a related field. Thus, the petitioner fails to establish that the position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor’s or higher degree in a specific field of study. The petitioner does not establish that the proposed position is so complex or unique that only an individual with a bachelor’s degree in a specific specialty can perform it. The petitioner also does not establish that the nature of the proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor’s degree in mathematics or a business-related field. To the extent that the position includes a requirement that the worker be bilingual, the *Handbook* indicates that there is no specific degree requirement for translators or interpreters. The duties, as described by the petitioner, appear to be the typical duties of a medical secretary at a solo medical practice, a position which the *Handbook* indicates does not require a bachelor’s degree and can be filled by a non-degreed individual based on experience less than equivalent to a bachelor’s degree in a specific specialty.

The burden of proving eligibility for the benefit sought remains entirely 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.