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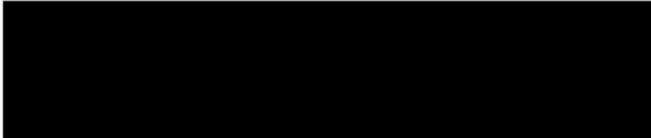
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090

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U.S. Citizenship
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Services

D2



FILE: WAC 07 157 52899 Office: CALIFORNIA SERVICE CENTER Date:

JUL 10 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, 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 appeal will be dismissed. The petition will be denied.

The petitioner is a for-profit enterprise engaged in home health services that seeks to employ the beneficiary as a medical records specialist. 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 for the petitioner states that the proffered position qualifies as a specialty occupation and submits additional evidence.

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)(ii):

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

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 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 specialist. Evidence of the beneficiary’s duties includes: the Form I-129; the company support letter dated April 20, 2007; and the petitioner’s response to the RFE. In the April 20, 2007 support letter, the petitioner claimed that the beneficiary’s specific job duties shall include:

developing and implementing policies and procedures for documenting, storing and retrieving information, and for processing medical-legal documents, insurance data, and correspondence requests in conformance with federal, state and local regulations and statutes;

supervising staff, directly or through subordinates, in preparing and analyzing medical documents;
participating in the development of and design of health information system;
coordinating medical care evaluation with medical staff regarding patients and clients records, developing criteria and methods for such evaluation;
analyzing patient data for reimbursement, facility planning, quality of patient care, risk management, utilization management and research.

The director requested additional evidence in support of the premise that the proffered position was in fact a specialty occupation in the RFE dated July 10, 2007. In a response dated October 1, 2007, counsel for the petitioner claimed:

The proffered position of Medical Records Specialist is a specialized position designed at analyzing and managing the medical records of the organization. This specialized position is not only desirable, but more specifically, an indispensable element of to [sic] Petitioner's day-to-day operation as home health service agency providing quality, comprehensive, multidisciplinary care to its clientele base. This position carries job duties so complex in nature that an individual with at least a bachelor's degree in the occupational field is required for effective and efficient performance of the job duties.

Counsel restated the description of duties provided by the petitioner in the April 20, 2007 letter, and claimed that the proffered position of medical records specialist differs from that of "Medical Records and Health Information Technicians."

The director determined that the proffered position was not a specialty occupation. The director found that the record contained insufficient evidence to show that the degree requirement was an industry-wide standard among similar institutions. The director found that there was insufficient evidence to show that the petitioner would employ the beneficiary in a position with duties that are characteristic of those found in a specialty occupation or that the petitioner routinely hired employees with a degree in a specific field of study for entry into the position of medical records specialist.

On appeal, the petitioner contends that the proffered position is a specialty occupation, and contends that the proffered position is more akin to that of a "Medical and Health Services Manager," as defined by the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). Counsel submits a copy of the summary report for medical and health services managers from the Occupational Information Network (O*Net) and a copy of the position description of Medical Records Specialist, as defined by the State University of New York (SUNY) University-Wide Human Resources Manual, which indicates that a bachelor's degree in medical records is required for such a position. Counsel also relies on an unpublished AAO decision finding that the position of medical records specialist was a specialty occupation.

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 first considers 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 USCIS 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In determining whether a position qualifies as a specialty occupation, USCIS 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 baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

As previously mentioned, USCIS 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 *Handbook* discloses that a baccalaureate degree in a specific specialty is not required for a medical records and health information technician. The *Handbook* reports:

Medical records and health information technicians entering the field usually have an associate degree from a community or junior college. Many employers favor technicians who have become Registered Health Information Technicians (RHIT). Advancement opportunities for medical record and health information technicians are typically achieved by specialization or promotion to a management position.

Based on the *Handbook's* information, employers do not require a bachelor's degree in a specific specialty for medical records and health information technicians.

It is noted, however, that counsel on appeal asserts that the director's reliance on the occupation of medical records and health information technicians, as defined by the *Handbook*, was inappropriate. Instead, counsel contends that the proffered position is more akin to that of a medical and health services manager. The *Handbook* provides, in part, the following overview of this position:

Health care is a business and, like every business, it needs good management to keep it running smoothly. Medical and health services managers, also referred to as *health care executives* or *health care administrators*, plan, direct, coordinate, and supervise the delivery

of health care. These workers are either specialists in charge of a specific clinical department or generalists who manage an entire facility or system.

The structure and financing of health care are changing rapidly. Future medical and health services managers must be prepared to deal with the integration of health care delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work, and an increased focus on preventive care. They will be called on to improve efficiency in health care facilities and the quality of the care provided.

The AAO notes that while several similarities appear to be present in the description of the proffered position and the above definition, the proffered position also includes numerous tasks outlined in the position of medical records and health information technicians. Nevertheless, even if counsel's assertions prevailed with regard to the proffered position being that of a medical and health services manager, the petitioner would still fall short of meeting its burden.

The educational requirements, as set forth by the *Handbook* for the position of medical and health services manager, are as follows:

Medical and health services managers must be familiar with management principles and practices. A master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities, at the departmental level within health care organizations, and in health information management. Physicians' offices and some other facilities hire those with on-the-job experience instead of formal education.

As with the position of medical records and health information technicians, a degree in a *specific specialty* is not a prerequisite for entry into the position. The lack of a requirement of a degree in a specific specialty for this position, both by the petitioner and by the *Handbook*, indicate that the position of medical and health services manager is not one that Congress contemplated when it created the H-1B visa category. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, medical records specialist.

On appeal, the petitioner submits a copy of an unpublished AAO decision finding that the position of medical records specialist was a specialty occupation based on review of the definition of medical and health services managers. Moreover, the beneficiary in that petition is the beneficiary of the current petition. Based on these facts, counsel asserts that the petition should be approved. The AAO disagrees. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged

errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations – the record of proceeding contains no evidence, such as job postings or classified advertisements from other companies that are similar in nature to the petitioner. The absence of such evidence suggests that a specific degree requirement is not common to the industry in parallel positions among similar organizations.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The petitioner has submitted no evidence of its hiring practices. As a result, the AAO is precluded from finding that a degree in a *specific specialty* is normally required by the petitioner for candidates for the proffered position.

Finally, there is no evidence in the record to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): 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 baccalaureate or higher degree in a specific specialty. As previously discussed, the *Handbook* indicates that employers do not require a baccalaureate degree in a specific specialty for either a medical records and health information technician or a medical and health services manager.

For the reasons stated 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.