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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC-01-246-55502 Office: California Service Center Date: FEB 10 2003

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a skilled nursing facility with 133 employees and a gross annual income of $7 million. It seeks to employ the beneficiary as a medical records administrator for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

> an 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.

The director denied the petition because the petitioner had not demonstrated that the proffered position, which parallels that of a medical records technician, requires a baccalaureate degree. On appeal, counsel states, in part, that the proffered position is that of a medical records administrator, which qualifies as a medical and health service manager position. Counsel further states that the Department of Labor (DOL) in its Occupational Outlook Handbook (Handbook) has determined that the position of medical and health service manager is a specialty occupation.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

> * Maintain all medical records of patients, accurately coding and documenting their diseases, conditions and treatments pursuant to the ICD-9 International Classification of Diseases, which is the standard used by the World Health Organization and the US Center for Health Statistics.

* Implement data validation procedures and medical records quality improvement (QI) processes.

* Conduct training programs in medical record keeping, medical terminology and medico-legal aspects of record keeping.

* Design an efficient health information system and record keeping procedures that will provide quick data storage and retrieval.

* Coordinate committee functions relating to health records management, health information systems, and medical staff activities that evaluate the quality and appropriateness of patient care.

* As custodian of confidential patient information, approve release of medical records submitted to the department.

* Act as secondary source of information on coding system regulations and any changes made by official agencies that affect coding information policies. Serve as a resource staff to other staff on legal issues regarding health information.

* Direct the work coders, transcribers and other health information personnel making sure that the proper review and screening of the entire medical records are done before abstracts (of the clinical data) are coded.

* Constantly review diagnostic and procedure codes on all clinical data (of the facility) such as diseases, therapies, surgeries, lab tests, pharmaceuticals, treatments, making sure that facility is using the most current ICD-9 diagnostic codes.

* Require all coders, transcribers and other medical record-keeping personnel to adhere to accuracy of information, concentration and close attention to detail.

* Contact health insurance firms and health maintenance organizations on matters pertaining to reimbursement regulations and clarify codes, which are unclear to the organizations.

* Resolve consumer concerns/problems relating to record keeping policies of the facility.

* Implement rules on close confidentiality of medical records and that patient/resident privacy rights are strictly protected.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the beneficiary is a medical records administrator/medical and health services manager, an occupation that would normally require a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration. In its Handbook, 2002-2003 edition, at page 75, the DOL describes the job of a medical and health service manager, in part, as follows:

> Clinical managers have more specific responsibilities than 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. These 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.

The record reflects that the petitioner, which is a skilled nursing facility, employs 133 persons and has a gross annual income of $7

million. The description of the proposed duties does not demonstrate that the position offered includes complex duties such as developing reports and budgets.

The duties that the petitioner endeavors to have the beneficiary perform are information recording and supervisory duties, which are similar to the duties that a medical records and health information technician, and an office and administrative support supervisor or manager would execute in a medical facility. In contrast to the description of a medical records administrator/medical and health services manager, at page 288 of the Handbook, the DOL describes the position of a medical records and health information technician, in part, as follows:

> Medical records and health information technicians begin to assemble patients' health information by first making sure their initial medical charts are complete. They ensure all forms are completed and properly identified and signed, and all necessary information is in the computer. Sometimes, they communicate with physicians or others to clarify diagnoses or get additional information.
>
> Technicians assign a code to each diagnosis and procedure...Technicians then use a software program to assign the patient to one of several hundred "diagnosis-related groups," or DRG's. The DRG determines the amount the hospital will be reimbursed if the patient is covered by Medicare or other insurance programs using the DRG system.

In addition, in its Handbook, at pages 417-418, the DOL describes the jobs of office and administrative support worker supervisors and managers, in part, as follows:

> These workers are employed in virtually every sector of the economy...
>
> Planning the work of their staff and supervising them are key functions of this job. To do these effectively, the supervisor must know the strengths and weaknesses of each member of the staff, as well as the required level of quality and time allotted to each job.
>
> After allocating work assignments and issuing deadlines, office and administrative support supervisors and managers oversee the work to ensure that it is proceeding on schedule and meets established quality standards.
>
> Office and administrative support supervisors and managers usually interview and evaluate prospective clerical employees.

> Office and administrative support supervisors and managers often act as liaisons between the clerical staff and the professional, technical, and managerial staff. This may involve implementing new company policies or restructuring the workflow in their departments. They must also keep their superiors informed of their progress and abreast of any potential problems. Often this communication takes the form of research projects and progress reports. Because they have access to information such as their department's performance records, they may compile and present these data for use in planning or designing new policies.

The types of duties the petitioner ascribes to the beneficiary fall primarily within the scope of a medical records and health information technician position, and an office and administrative support worker supervisor or manager, rather than a medical records administrator/medical and health services manager position. For example, the petitioner states that the beneficiary will "[d]irect the work coders, transcribers and other health information personnel making sure that the proper review and screening of the entire medical records are done before abstracts (of the clinical data) are coded" and "[r]equire all coders, transcribers and other medical record-keeping personnel to adhere to accuracy of information, concentration and close attention to detail..." Such duties are not duties normally associated with a medical records administrator/medical and health services manager.

In its Handbook at page 289, the DOL finds that medical records and health information technicians entering the field usually have an associate degree from a community or junior college. At page 418 of the Handbook, the DOL also finds that most firms fill office and administrative support supervisory and managerial positions by promoting clerical or administrative support workers from within their organizations. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as medical technology, for the offered position. Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.