



U.S. Citizenship
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Services

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FILE: LIN 03 253 53331 Office: NEBRASKA SERVICE CENTER Date: SEP 02 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, 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 home healthcare facility and seeks to employ the beneficiary as a quality assurance coordinator. 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 quality assurance coordinator. Evidence of the beneficiary's duties was included with the I-129 petition and in response to the director's request for evidence. According to this evidence the beneficiary would:

- Be responsible for the collection of data for audits, evaluate the indicators/results, and report findings to the Administrator;
- Be responsible for the interpretation of data from audits, identify problems, and recommend resolution of the findings;
- Assess the level of quality and clinical risk issues;
- Develop a chart audit program to monitor compliance with all Federal, State, corporate, and JCAHO guidelines, as well as insure the delivery of high standards of care;
- Follow up and track all "test" cases for reimbursement and report to the Administrator;
- Develop in-service training on identified issues with staff development personnel and the Administrator;
- Review quality assurance standards;
- Participate in and promote the utilization of research findings by making appropriate recommendations for changes in policies, procedures, and the standard of care; and
- Give appropriate feedback to staff on an individual basis at least bimonthly/monthly in an effort to maintain standards on documentation and a quality healthcare delivery system.

The petitioner finds the beneficiary qualified for the proffered position by virtue of her Bachelor of Science degree in Nursing.

The AAO finds that the duties of the position most closely resemble those of a nurse who has moved into the business side of healthcare. 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. In the 2004-2005 edition of the *Handbook* at 302, the *Handbook* states the following about the training and educational requirements for registered nurse positions:

There are three major educational paths to registered nursing: a bachelor's of science degree in nursing (BSN), an associate degree in nursing (ADN), and a diploma. BSN programs, offered by colleges and universities, take about 4 years to complete. . . . ADN programs, offered by community and junior colleges, take about 2 to 3 years to complete. . . . Diploma programs, administered in hospitals, last about 3 years. . . . Generally, licensed graduates of any of the three types of educational programs qualify for entry-level positions as staff nurses. *Id at 302.*

....

. . . [S]ome career paths are open only to nurses with bachelor's or advanced degrees. A bachelor's degree often is necessary for administrative positions and is a prerequisite for admission to graduate nursing programs in research, consulting, teaching, or a clinical specialization.

The *Handbook* does not elaborate on administrative nursing positions within this classification, although the *Handbook* does note:

Some nurses move into the business side of health care. Their nursing expertise and experience on a healthcare team equip them with the ability to manage ambulatory, acute, home health, and chronic care services. Employers – including hospitals, insurance companies, pharmaceutical manufacturers, and managed care organizations, among others – need RNs for health planning and development, marketing, consulting, policy development, and quality assurance. . . .

The proffered position appears to resemble a nursing position beyond the entry-level registered nurse, but it is not analogous to an administrative nursing position. A recent Service policy memo provides the following commentary on administrative nursing positions: "Nursing Services Administrators are generally supervisory level nurses who hold an RN, and a graduate degree in nursing or health administration. (*See Bureau of Labor Statistics, U.S. Dep't of Labor, Occupational Outlook Handbook at 75.*)" The *Handbook* reference is to the classification of medical and health services managers.¹ On page 75, the *Handbook* states:

¹ Memorandum from [REDACTED] Executive Associate Commissioner, INS Office of Field Operations, Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses, HQISD 70/6.2.8-P (November 27, 2002).

The term "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.

A review of the *Handbook* finds no requirement of a baccalaureate or higher degree in a specialized area for employment in the proffered position. Any of the three career paths noted above are sufficient for the beneficiary to perform the duties associated with the offered position. Experience and good performance can lead to promotion for a registered nurse to more responsible positions, such as assistant head nurse or head nurse/nurse supervisor. Likewise, good performance and experience can equip a nurse to perform the duties of a patient care coordinator or quality assurance coordinator in the healthcare field. There is no requirement, however, that a nurse, or any other healthcare professional performing the duties of a quality assurance coordinator, have a baccalaureate or higher degree or its equivalent as a minimum requirement for entry into that position. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this criterion the petitioner submitted, on appeal, approximately twelve job advertisements for quality assurance coordinators/managers/specialists. The submitted advertisements indicate that the following degrees qualify applicants for the positions: public health administration; health care administration; nursing; social welfare; mental health related fields; social sciences; nursing; emergency medical training; human services; chemistry; life science; health; and public or business administration. Some advertisements required a degree, but did not indicate that a degree in any specific discipline was required. The AAO notes the range of degrees across a broad number of specialties for these advertisers. The advertisements do not establish that a degree requirement in a specific specialty is common to the industry in parallel positions. This is especially true given the statements in the *Handbook* which indicate that the duties of a nurse who moves into the business side of healthcare include those of quality assurance personnel, and are routinely performed on a national basis by those with less than a baccalaureate level education. Further, the petitioner has not established that the advertised positions are from organizations similar in nature and scope to that of the petitioner. Several advertisements were also submitted in response to the director's request for evidence. Some of those advertisements were not in the same industry and required degrees in engineering. The remaining advertisements were insufficient in scope to establish the referenced criterion and/or do not establish that the advertisements are for parallel positions to that of the proffered position. The evidence submitted fails to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree or its equivalent for entry into the proffered position, and offers no evidence in this regard. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has not been established.

The petitioner has not established that the duties of the proffered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty. Nor has it been established that the duties of the offered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4). The duties described are general and routine for nurses who work in the

business side of healthcare performing duties related to quality assurance. A baccalaureate level education is not required for entry into the position.

The petitioner further asserts that previous agency decisions have classified similar positions as specialty occupations. This reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire record of proceedings in the petitions referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS 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 specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as a quality assurance coordinator. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h).

Finally, counsel's assertions regarding the *Dictionary of Occupational Titles (DOT)* SVP rating for the offered position are also unpersuasive. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations. 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.