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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: LIN 02 195 54634 Office: NEBRASKA SERVICE CENTER Date: **JAN 29 2004**

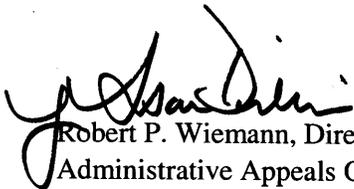
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)

ON BEHALF OF PETITIONER:
[Redacted]

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 senior health center that seeks to employ the beneficiary as a unit coordinator. 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 submits a brief.

Section 214(i)(1) of the Immigration and Nationality Act (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 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) 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) 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 unit coordinator. According to the evidence in the record, the beneficiary would perform duties that entail, in part: assessing, planning, and coordinating the RN

staff; participating in implementing planned changes and activities to improve nursing services; and planning ways to solve problems and make improvements to the unit in collaboration with other supervisory personnel. The petitioner indicated that the proffered position requires a bachelor's degree in nursing (BSN).

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director cited the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which states that an individual does not need to hold a baccalaureate degree in nursing to fill a registered nurse position.

On appeal, counsel submits a copy of the beneficiary's Oregon nursing license. Counsel states, in part, that the record contains job advertisements of the proffered position and of similar positions in other hospitals that demonstrate that a baccalaureate degree in nursing is required for the proffered position. Counsel further states that the record contains an opinion letter from an industry expert to further demonstrate the degree requirement. Counsel additionally states that the proposed duties, which include the overall assessing, planning, and coordinating of the RN staff, are so complex that a baccalaureate degree in nursing is required. As such, counsel indicates that the petitioner has satisfied all of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 turns first to 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 CIS 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. In its Handbook, 2002-2003 edition, at page 269, the DOL states the following about the training and educational requirements for registered nurse positions:

There are three major educational paths to registered nursing: associate degree in nursing (A.D.N.), bachelor of science degree in nursing (B.S.N.), and diploma. . . . Generally, licensed graduates of any of the three program types qualify for entry-level positions as staff nurses.

....

[S]ome career paths are open only to nurses with bachelor's or advanced degrees. A bachelor's degree is often necessary for administrative positions, and it 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 reference is made to two nursing positions within the classification of registered nurse that appear analogous to the proffered position. The Handbook states the following about head nurses or nurse supervisors:

Head nurses or nurse supervisors direct nursing activities. They plan work schedules and assign duties to nurses and aides, provide or arrange for training, and visit patients to observe nurses and to ensure the proper delivery of care. They also may see that records are maintained and equipment and supplies are ordered.

The proffered position appears to resemble a nursing position beyond the entry-level registered nurse, but it does not appear to be analogous to an administrative nursing position. A recent CIS 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. On page 75, the Handbook states:

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.

The structure and financing of healthcare is changing rapidly. Future medical and health services managers must be prepared to deal with evolving integrated healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work, and an increased focus on preventive care. . . . Increasingly, medical and health services managers will work in organizations in which they must optimize efficiency of a variety of interrelated services, for example, those ranging from inpatient care to outpatient follow-up care.

....

In smaller facilities, top administrators handle more of the details of daily operations. For example, many nursing home administrators manage personnel, finance, facility operations, and admissions, and have a larger role in resident care.

In this case, the petitioner has not demonstrated that the proffered position is an administrative position, which would require a registered nurse with a master's degree in nursing or health administration. Rather, the proposed duties are similar to those of a head nurse or nurse supervisor, as described herein. It is noted that the beneficiary holds a baccalaureate degree in nursing. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required as a minimum for entry into the position being offered to the beneficiary.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for various nursing positions. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Two of the

advertisements are for clinical coordinator positions for a facility more than twice the size of the petitioner's facility, whose duties include interviewing and competency evaluations processes. Another nurse managerial position entails the duties of budget development and maintenance-capital, expense, and salary duties. Thus, the advertisements have little relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The record contains a position statement by the American Association of Colleges of Nursing (AACN), recognizing the Bachelor of Science degree in nursing as the minimum educational requirement for professional nursing practice. In its *Fact Sheet: Associate Degree in Nursing Programs and AACN's Support for Articulation*, the AACN states, in part, as follows:

AACN does not seek to limit the role of the associate degree-prepared nurse in the practice setting. The association does seek to define distinct scopes of practice congruent with educational preparation. AACN believes that education – the type and the amount – has an impact on the skills and competencies of a nursing clinician.

In this case, the petitioner has not demonstrated that the proffered position is that of a nursing clinician. As such, the AACN's position statement has no bearing on this proceeding.

The record also contains opinion letters from Ms. [REDACTED] Administrative Nurse Manager, Southwest Washington Medical Center, and Dr. [REDACTED] Dean of the School of Nursing, The University of Portland. Ms. [REDACTED] attests that a baccalaureate degree in nursing is the minimum requirement for positions such as the proffered position. Dr. [REDACTED] states, in part: “[I]t would seem reasonable and necessary that a registered nurse hired to work in such an administrative/supervisory nursing position, possess the minimum of a bachelor's degree in nursing.” (Emphasis in the original.) The writers, however, do not provide evidence in support of their assertions. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states that the evidence previously submitted demonstrates that the petitioner, in the past, has required the services of individuals for the proffered position with the minimum of a degree from an accredited nursing school. Although not explicitly stated, it is assumed that “the minimum of a degree from an accredited nursing school” indicates a minimum of a baccalaureate degree in nursing. According to the I-129 petition, the petitioner was established in 1973 and it currently has 181 employees. To demonstrate that it normally requires a BSN for employment in the proffered position, the petitioner would need to document the credentials of all of its unit coordinator nurses. Again, without documentary evidence, the petitioner will not meet its burden or proof in these proceedings. *See Matter of Treasure Craft of California, id.*

CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation, regardless of the petitioner's past hiring practices. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of

highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ In this regard, the petitioner fails to establish that the registered nurse position it is offering to the beneficiary entails the theoretical and practical application of a body of highly specialized knowledge.

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related 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.

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.