



U.S. Citizenship
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Services

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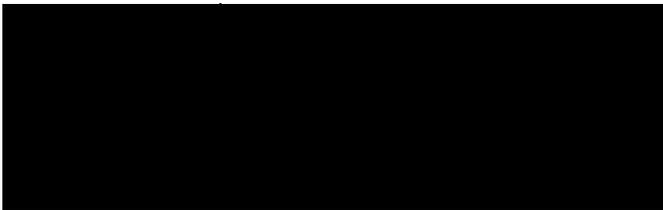


FILE: WAC 04 015 53617 Office: CALIFORNIA SERVICE CENTER Date: AUG 24 2005

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

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 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 skilled nursing facility that seeks to employ the beneficiary as a nurse consultant/in-service 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 on the ground that the proffered position is not a specialty occupation. On appeal, counsel submits a brief and 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)(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 nurse consultant/in-service coordinator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail reviewing and recommending changes to the nursing organization and the administrative procedures; analyzing nursing techniques and services and recommending modifications to suit residents' needs; developing and carrying out educational programs for nursing staff and non-professional nursing personnel; providing assistance in developing guides and manuals for specific aspects of nursing services; preparing educational materials and assisting management in planning and developing health and educational programs and advising about in-services available through community resources; consulting with nursing groups about professional and educational problems; preparing or furnishing data for articles and lectures and participating in surveys and research studies; assisting nursing services supervisory personnel in solving problems of in-service training, promotions, transfers, and discipline of nursing and auxiliary personnel. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree.

The director decided that the evidentiary record failed to establish any of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that the proposed duties are administrative in nature and require knowledge associated with a registered nurse (RN). The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director further stated, explains that a RN does not require a bachelor's degree in nursing. The director found the proposed administrative duties resemble those of an administrative services manager as that occupation is described in the *Handbook*, and that the *Handbook* shows that employers do not require a bachelor's degree for an administrative services manager. The referenced information in the *Dictionary of Occupational Titles (DOT)*, according to the director, was unpersuasive in showing that the proposed position is a specialty occupation. The director stated that the proposed duties are generic in nature, providing no detail of a specialized or complex nature, and that the evidence is insufficient to show that the job offered could not be performed by an experienced person whose educational training falls short of a baccalaureate degree.

On appeal, counsel states that most of the beneficiary's time will be devoted to determining the quality of care provided; coordinating and implementing quality standards; and monitoring personnel activities, which will assist the administrator in reviewing and recommending changes in the nursing organization and the administrative procedures. Counsel states that the proposed position involves the "review of patient's [sic] records to insure the proper treatment," and reviewing records to analyze and determine the quality of health care, educational programs, and materials that will be provided to the facility. The job postings show, counsel asserts, that the standard entry-level qualification for the proposed position is at least a bachelor's degree in the health sciences. According to counsel, the beneficiary will not perform nursing duties, have contact with patients, or supervise nurses in the performance of their duties. Counsel states that the beneficiary must have an understanding of medical treatment, coordination, management principles, and administrative procedures in a healthcare facility. Referring to the *Handbook*, counsel asserts that it reveals that the proposed position is

similar to a specialist health services manager and is distinguishable from a head nurse/nurse supervisor. Counsel states that the *Handbook* relays that a bachelor's degree is adequate for some entry-level positions as a health services manager in small facilities and at the departmental level within healthcare organizations, and counsel discusses the educational requirements of a health services manager as described in the *DOT*. Counsel refers to the job postings and states that although the employers in the postings are from large medical facilities, their qualification requirements apply to the proposed position. In establishing the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), counsel contends that *Matter of General Atomic Company*, 17 I&N Dec. 532 (Comm. 1980) indicates that a petitioner need not show that a particular size of business or industry requires a bachelor's degree, and that *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989) confirms that the size of an operation bears no rational relationship to the need for a professional.

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 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining 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 baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Counsel asserts, in part, that the *DOT's* SVP rating was not considered, even though submitted into the record. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the director did not err in discounting the *DOT* information.

The duties of the proposed position parallel those of a head nurse or nurse supervisor as those occupations are described in the *Handbook*. The *Handbook* delineates head nurses or nurse supervisors as:

[Directing] nursing activities, primarily in hospitals. 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 that the patients receive proper care. They also may ensure that records are maintained and equipment and supplies are ordered.

The AAO finds that many of the beneficiary's duties are encompassed within the above *Handbook* excerpt. The beneficiary's duty to analyze nursing techniques and services and recommend modifications to suit residents' needs is parallel to the *Handbook's* duties of directing nursing activities, and visiting patients to observe nurses and ensure that patients receive proper care. The beneficiary will develop and carry out educational programs for nursing staff and non-professional nursing personnel, provide assistance in developing guides and manuals of nursing services, prepare educational materials and assist management in planning and developing health and educational programs and advising about in-services available through community resources, and consult with nursing groups about professional and educational problems. These responsibilities relating to education mirror the *Handbook's* duty of providing or arranging training. The beneficiary's duties relating to scheduling and maintaining phone numbers, as described in counsel's April 1, 2004 letter, resemble the *Handbook's* duty to plan work schedules and assign duties to nurses and aides. The beneficiary's duties associated with equipment and supplies are similar to the *Handbook's* duties of ensuring that equipment and supplies are ordered.

Some of the proposed duties are not sufficiently described. The petitioner does not elaborate on how the beneficiary will assist nursing services supervisory personnel in solving problems of in-service training, promotions, transfers, and discipline of nursing and auxiliary personnel. The petitioner does not describe the administrative procedures and the areas in the nursing organization that need to be changed; amplify on the kind of data that the beneficiary will furnish for articles and lectures; or explain the surveys and research studies that the beneficiary will be involved in or the beneficiary's participation in this. There is insufficient evidence therefore to show that these are duties would require baccalaureate-level knowledge in nursing or a related field. In addition, although the beneficiary will spend 10 percent of her time confirming licensure and certification, no evidence demonstrates that this requires a baccalaureate degree in nursing.

The *Handbook* indicates that the occupations of head nurse or nurse supervisor do not require a bachelor's degree in a specific specialty. The *Handbook* states "students must graduate from an approved nursing program and pass a national licensing examination in order to obtain a nursing license," and relays that:

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.

The AAO's conclusion, from the evidence to which it has referred, is that the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to job postings

and the decisions in *Matter of General Atomic Company* and *Young China Daily* to show that the size of an operation or industry bears no rational relationship to the need for a professional.

The job postings and the decisions in the two cases are not persuasive in establishing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The language of the first alternative prong of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) is clear. It states that a specific degree requirement must be common *to the industry* in parallel positions among *similar* organizations. Thus, the nature of the petitioner's operation and its industry are relevant in establishing this criterion. The job postings represent employers that differ from the petitioner, which is a skilled nursing facility, or their nature is not disclosed. The healthcare facility seeking a clinical coordinator/nurse manager differs from the petitioner in that it provides surgical services, KCI does not describe its nature, BioScrip ADIMA is a pharmaceutical healthcare organization, and Seabrook House is an alcohol and drug treatment center. Thus, the postings fail to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

No evidence establishes the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is that the petitioner show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Most of the proposed duties resemble those of a head nurse or nurse supervisor, which are occupations that the *Handbook* reveals do not require a bachelor's degree in a specific specialty. As discussed earlier, some of the proposed duties are not adequately described to show that they would require baccalaureate-level knowledge in nursing or a related field. Furthermore, although the beneficiary will confirm licensure and certification, no evidence demonstrates that this responsibility requires a baccalaureate degree in nursing.

No evidence establishes 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 fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Most of the proposed duties resemble those of a head nurse or nurse supervisor, which are occupations that the *Handbook* reports do not require a bachelor's degree in a specific specialty. No evidence shows that the duty relating to licensure and certification and the duties that are not clearly defined by the petitioner are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

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.

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