

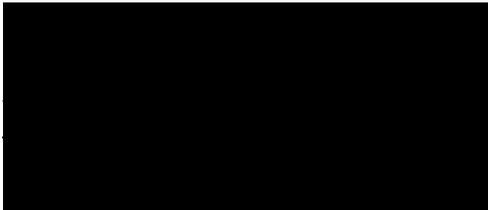
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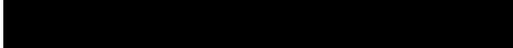
U.S. Citizenship
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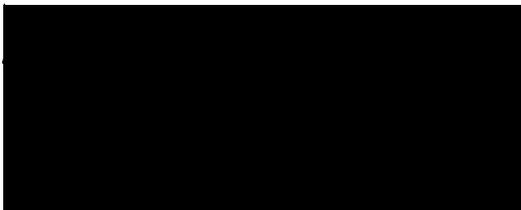
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FILE: WAC 02 076 50455 Office: CALIFORNIA SERVICE CENTER Date: **MAR 31 2005**

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 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 healthcare service provider that seeks to employ the beneficiary as an associate administrator. 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 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 an associate administrator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company 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 interpreting, analyzing and implementing quality standards for each of the petitioner's clients pursuant to the company's operations manual and existing contracts; assisting in formulating solutions to complaints and based on suggestions from clients and patients; coordinating with each branch's human resource department in developing standard policies; monitoring each nurse to make sure each employee has the requisite training, instruction or continuing education in accordance with the Board of Nursing and complies with each client's quality standards; reviewing nurse's performance before renewing contracts; implementing an effective communication/information system between the client, nurses and personnel department to monitor, avoid and eventually eliminate tardiness, absenteeism and truancy among staff. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree or its equivalent and have knowledge of human behavior.

The director determined that the proffered position was not a specialty occupation. The director found that the duties of the proffered position are for managerial positions. The director indicated that a manager is not considered to be a "specialty occupation" unless he or she is qualified for, and intends to work in a professional occupation requiring the attainment of a specific degree. The director noted the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) explains that the managerial occupations do not require a bachelor's degree in a specific specialty. The director further noted that the proposed duties and level of responsibility do not indicate a complexity or authority that is beyond what is normally encountered in the occupational field for individuals who hold a degree in nursing. The director stated the evidence of record is not persuasive to show that the job offered could not be performed by an experienced individual whose educational training falls short of a baccalaureate degree.

On appeal, counsel states it is the petitioner's view that the proffered position for an associate administrator in a healthcare facility qualifies as a specialty occupation. The petitioner submits that the director "is in error in considering the position as a general management position." The petitioner states that the duties of the position are "extremely complex and specialized since they require, not only a familiarity with management and strong communications and leadership skills but also knowledge in the health/life sciences in order to effectively monitor nursing staff and oversee quality of healthcare services being rendered."

Counsel refers to the Department of Labor's Dictionary of Occupational Titles (*DOT*) and the *Handbook* to support the petitioner's contention that the position requires as a minimum, a baccalaureate degree in the field. Additionally, the petitioner submits an approved labor condition application in the specialty valid from November 1, 2001 until November 1, 2004.

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 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.

In the denial, the director stated that the duties of the proffered position are a combination of managerial and supervisory duties and are associated with the duties of manager supervisor located in the *Handbook*. The director also notes that a degree in nursing is less than a baccalaureate level degree. Counsel asserts that the *DOT* shows that a bachelor's degree would be required for an associate administrator in a healthcare facility.

The AAO does not agree with the petitioner's assertion that the proffered position is that of an associate administrator in a healthcare facility, which may be found in the *Handbook* under the occupational title for medical and health services manager. The proffered position describes duties similar to that of a nurse supervisor. In its *Handbook*, 2004-2005 edition, the DOL 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 (A.D.N.), and a diploma. . . . Generally, licensed graduates of any of the three types of educational programs 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, 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 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. The *Handbook* states:

The occupation, 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.

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. As such, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on two job postings. This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. Both postings for an associate administrator require a bachelor's degree and five years experience or an associate degree and ten years experience. Neither posting indicates if there is a specific baccalaureate degree required and both postings would accept an associate degree with additional experience. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

The record also does not include any evidence from professional associations regarding an industry standard. In addition, no documentation to support the complexity or uniqueness of the proffered position was submitted. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

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 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 the duties is usually associated with the attainment of a baccalaureate or higher degree. No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Counsel contends the duties to be performed are complex and specialized since they require, not only a familiarity with management and strong communications and leadership skills but also knowledge in the health/life sciences in order to effectively monitor nursing staff and oversee the quality of healthcare services being rendered. Counsel's assertions are not persuasive. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As described by the petitioner, the duties of the proffered position are not 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 not presented duties that are more complex than routinely required in a mid-level nurse management position.

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.