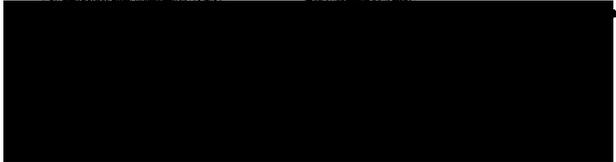




U.S. Citizenship
and Immigration
Services

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FILE: LIN 03 236 54501 Office: NEBRASKA SERVICE CENTER Date: SEP 09 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 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 health care company that seeks to employ the beneficiary as a quality assurance manager. 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 is not a specialty occupation and the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not 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.

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 quality assurance manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 1, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: determining the latest quality assurance issues affecting the home health care service industry; determining the effect that recent changes have on the petitioner's process or policy; determining how best to comply with state requirements and regulations pertaining to home care; conducting daily review documentation of assigned field staff, including admission, resumption of care, recertification, interim orders, daily progress notes and discharges to ensure uniformity and adherence to company policy and procedure; auditing processes and procedures regarding all aspects of care to determine the level of client satisfaction; determining the best course of action to improve and maintain all aspects of care; attending client conferences with treatment staff to determine the effect of quality assurance measures; interfacing with staff to coordinate delivery of quality home health care services; performing data collection activities and related data analysis for quality improvement; auditing the patient care program including patient intake, healthcare provision and discharge procedures; designing new procedures and programs to improve quality healthcare provision and revising old policies and procedures; presenting procedure and policy proposals to management; communicating the correlation between newly implemented policies and procedures and quality of patient care to management; interviewing patients before healthcare provision to determine general expectations of quality care; periodically contacting patients to determine satisfaction and potential improvement of healthcare provision; discussing patient treatment and patient responses to healthcare provision with staff; presenting findings to management that demonstrate correlations between healthcare provision and proposed policy and procedure; attending patient conferences with healthcare staff to determine the level of quality care and patient satisfaction; designing effective procedures to monitor intake records, recertification orders, interim orders, resumptions of care and discharge; creating an effective system to coordinate daily progress notes and treatment records between various field officers, caregivers, and billing department; determining whether the petitioner's current procedures and policies accurately reflect new changes and current industry standards; presenting findings to management in bi-monthly reports; collecting employee concerns regarding new and current policy and procedure; determining the effect of employee suggestions on quality healthcare provision to patients and employee ability to provide care; and providing a monthly report to management regarding findings. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in nursing or a related medical field.

The director found that the proffered position was not a specialty occupation. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the duties of the proffered position most resemble those of a medical and health services manager, which is a specialty occupation. Counsel states that the director did not understand that the proposed duties are as applicable in the home health care setting as they would be in a residential care facility. Counsel further states that the director did not evaluate all of the evidence submitted regarding the duties of the proffered position. Counsel asserts that the position requires the use of analytical and evaluative skills that would typically be gained through earning a bachelor's degree. Counsel asserts that the petitioner

submitted four Internet job listings for quality assurance managers to establish that a bachelor's degree is the industry standard to enter the profession, and that the size of those four organizations is irrelevant to establishing an industry requirement.

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. There is no evidence of record that establishes that a quality assurance manager is a specialty occupation requiring a bachelor's degree in a specific specialty.

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 Department of Labor's *Occupational Outlook Handbook (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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. While the *Handbook* does not specifically refer to the proffered position, as counsel notes, the duties of a position, rather than the title, are used to analyze whether a job is a specialty occupation. Titles of positions, by themselves, are not reliable indicators of whether positions are specialty occupations. If the duties of a proffered position are similar to the duties of one or more positions described in the *Handbook*, it is appropriate to use it as a reference.

The AAO does not concur with counsel that the position falls under the description of a medical and health services manager. Many of the duties of the proffered position are similar to those of a nurse, or more specifically, a head nurse. A review of the registered nurse job description in the *Handbook* indicates that a head nurse may ensure that records are maintained, ensures quality assurance standards for patients, determines the proper care or services to provide by applying utilization review criteria and that employers need registered nurses for quality assurance positions. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a registered nurse job.

Regarding parallel positions in the petitioner's industry, the petitioner submitted four Internet listings for quality assurance managers: one position required a bachelor's degree in nursing, health information administration or statistics; one required a bachelor's degree in a "related field," but did not specify what fields would qualify; one required graduation from "an accredited School of Nursing," with a bachelor's degree or master's degree in nursing preferred; and one required a registered nurse license, with a bachelor's or master's degree preferred. Only one of these positions required a bachelor's degree in a specific specialty, and two did not require any bachelor's degree, although it was preferred. This does not establish that a

baccalaureate degree is the minimum qualification for entry into the position as an industry standard. In addition, there is no evidence to show that the employers issuing the advertisements are similar to the petitioner. Counsel refers to *Young China Daily v. Campbell*, 745 F.Supp. 552 (N.D. Cal. 1989) to support her assertion that the size of the employers in the submitted job listings is irrelevant. The AAO disagrees. The regulations clearly state that to meet this criterion, the petitioner must establish that the degree requirement is common to the industry in parallel positions among *similar* organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Thus, in this case, the other organizations must be in home health care and have approximately the same number of employees, clients and level of income. This is relevant not because a smaller organization by definition has a lesser need for a professional in a specialty occupation, but because to establish an industry standard, the comparison must be between like organizations.

The record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. In researching available certifications for quality assurance managers on the Internet, the AAO found that the Healthcare Quality Certification Board (HQCB), which grants Certified Professional in Healthcare Quality status, has no minimum educational or experiential requirements to be eligible to take the certification exam.¹ Another certifying organization, the American Board of Quality Assurance and Utilization Review Physicians, which certifies professionals in addition to physicians, states that in order to take the exam, an applicant must either hold a current non-restrictive license in his or her field, or, if the profession does not require licensure, the credentials committee may determine eligibility based on experience and education.² It appears clear that there is no industry standard regarding educational requirements for entry into the field. Thus, the petitioner has 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. The proffered position is a new position and the petitioner is not able to meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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.

¹ www.cphq.org, accessed September 9, 2005.

² www.abqaurp.org/eligibility.asp, accessed September 9, 2005.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation, because she does not have the requisite managerial training to perform as a health services manager. As noted, the position is not a health services manager, but is instead a nurse, which is not a specialty occupation. The beneficiary has the equivalent to a U.S. bachelor's degree in biology and a U.S. doctor of medicine degree. She is not qualified to be a nurse.

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.