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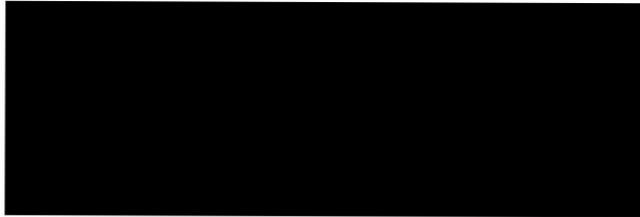
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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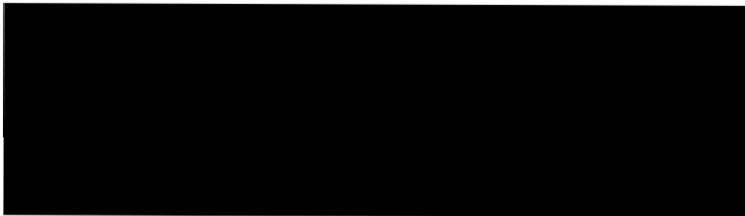
FILE: WAC 04 226 50847 Office: CALIFORNIA SERVICE CENTER Date: JUN 26 2006

IN RE:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 skilled nursing facility that seeks to employ the beneficiary as a nurse team leader. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and additional evidence including letters from similar businesses.

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 team leader. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 29, 2004 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

be responsible for directing and coordinating the nursing unit, which entails the following duties: interpreting hospital policies and procedures; establishing records systems; preparing reports and records on nursing unit activities; maintaining contact with physicians as necessary in accordance with individual patient care plans; researching patient records and reports; participating in training and educational programs and assisting the staff development department; assigning and supervising personnel in coordination with the staff development department; and evaluating information to be shared with outside nursing personnel and allied services for continuity of patient care. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in nursing.

The director found that the proffered position was not a specialty occupation because the job is not a health services manager position; it is similar to a head nurse or nurse supervisor position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. 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, in part, that the proffered nurse team leader position is similar to that of a health services manager, a position that requires a baccalaureate or higher degree according to the *Handbook*. Counsel states further that the proposed duties are so specialized and complex as to require a bachelor's degree.

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

At the outset, the AAO notes an inconsistency regarding the proposed duties. In the petitioner's July 29, 2004 letter, the petitioner's owner describes the proposed duties, in part, as follows: "Supervising and evaluating professional and nonprofessional personnel assigned to the unit . . ." This description conflicts with the description provided by counsel in her December 30, 2004 letter, in which the proposed duties are described, in part, as follows: "[The beneficiary] will directly supervise the Assistant Director and the MDS coordinator, which are positions that require a Bachelor's Degree. These two will directly supervise in turn licensed nurses, C.N.As and R.N.As." The record contains no explanation for this inconsistency. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is similar to a medical and health services manager or that the proffered position would normally require a bachelor's degree in nursing or a related field. In reviewing the position description of health services managers in the *Handbook*, 2006-07 edition, the AAO does not agree with counsel that the proffered position incorporates elements of the duties of a health services manager, who functions at a significantly more responsible level than does the nurse team leader as described by the petitioner. As discussed above, in her July 29, 2004 letter, the petitioner's owner describes the nurse team leader as a first-line supervisor of professional and nonprofessional personnel. As such, the proffered position is similar to that of a registered nurse position with supervisory duties. In its *Handbook*, 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 a bachelor's or master's degree. A bachelor's degree often is necessary for administrative positions, and it is a prerequisite for admission to graduate nursing programs in research, consulting, and teaching, and all four advanced practice nursing specialties – clinical nurse specialists, nurse anesthetists, nurse midwives, and nurse practitioners.

Some RNs start their careers as licensed practical nurses or nursing aides, and then go back to school to receive their RN degree. Most RNs begin as staff nurses, and with experience and good performance often are promoted to more responsible positions.

No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is normally required for a nurse team leader/registered nurse job.

Regarding parallel positions in the petitioner's industry, the record contains letters from five healthcare-related businesses. All writers assert that the proposed duties of the proffered position are similar to their director of nursing positions, which require a bachelor's degree in nursing and related experience. The writers, however, do not provide any evidence in support of their assertion or rely on industry surveys, data or other documentation to reach the conclusion that the position requires a bachelor's degree in nursing. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The *Handbook* is a compilation of results of nationwide industry questionnaires, surveys and personal interviews by the DOL, and indicates that there is no specific degree requirement for entry into the field. Additionally, the text of the letters is identical. Thus, the AAO must question whether the opinions expressed in each letter are the views of each author. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position.

The petitioner, therefore, 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. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish 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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform a specialty occupation. The *Handbook* indicates that in all states and the District of Columbia, students must graduate from an approved licensing program and pass a national licensing examination in order to obtain a nursing license. There is no evidence of record that the beneficiary is licensed as a nurse in the United States. The petitioner has not demonstrated that the beneficiary holds an unrestricted state license, registration or certification which authorizes her to fully practice nursing and be immediately engaged in nursing in the state of intended employment as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

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.