

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

Dj

**PUBLIC COPY**



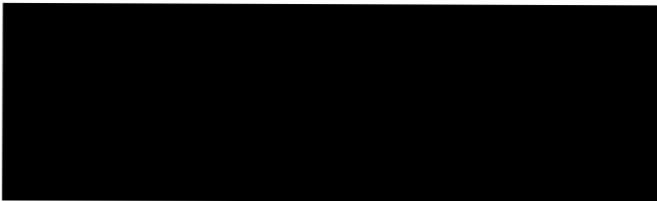
FILE: WAC 04 061 50112 Office: CALIFORNIA SERVICE CENTER Date: JUN 26 2006

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, 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 operates 20 healthcare facilities serving the developmentally disabled. It seeks to employ the beneficiary as a “Qualified Mental Retardation Professional/Administrator.” 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 and the beneficiary is not qualified to perform 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 "Qualified Mental Retardation Professional/Administrator." Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's December 11, 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 directing, personally or through managers, all the operations of the facility including programming, staff training, social services, and program coordination. He would also perform: client care; programming; staffing; in-service training; facility and records management; client service coordination; and administration. The petitioner indicated that the beneficiary is a qualified candidate for the job because he possesses a bachelor's degree in business administration, a master's degree in commerce, and related training.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a bachelor's degree. 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 position meets all of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states further that, based on federal and state statute, the proffered position qualifies as a specialty occupation, as a bachelor's degree or higher is normally the minimum requirement for entry into the position. Counsel also states that the petitioner normally requires a bachelor's degree or an equivalent for the proffered position, and that the proposed duties are so specialized and complex as to require such a degree.

The proffered position is described as a Qualified Mental Retardation Professional (QMRP)/Administrator of the petitioner's Intermediate Care Facility/Developmentally Disabled – Habilitative (ICF/DD-H). While the AAO normally consults the Department of Labor's *Occupational Outlook Handbook* for information about the duties and educational requirements of particular occupations, that publication does not contain information about all jobs in the labor market, such as the position offered herein. The proffered position in this case comprises both a QMRP administrator and a QMRP. The AAO does not find that a QMRP administrator position qualifies as a specialty occupation as there is no requirement in the California Code of Regulations (C.C.R.) that an administrator have a particular degree or that a degreed administrator be part of the ICF-DD-H staffing. *See* the C.C.R., Title 22, Division 5, Chapter 8.5, Article 3, Section 76872, and Article 4, Section 76913. Further, the evidence of record does not contain a job description for the QMRP administrator position as required by the C.C.R., Title 22, Division 5, Chapter 8.5, Article 4, Section 76916 (a)(2), which states that each "intermediate care facility/developmentally disabled-habilitative" will have "[j]ob descriptions detailing qualifications, duties and limitations of each classification of employee." 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)).

In contrast to the QMRP administrator position, the AAO finds that a QMRP position does qualify as a specialty occupation, as it requires a degree in a specialty. Pursuant to the C.C.R., Title 22, Division 5, Chapter 8.5, Article 1, Section 76830 (a), a QMRP is defined as a person who has specialized training or one year of experience in treating or working with the developmentally disabled and is one of the following:

- (1) A person with a master's degree in psychology;
- (2) A physician;

- (3) An educator with a degree in education;
- (4) A social worker with a bachelor's degree in:
  - (A) Social work from an accredited program; or
  - (B) A field other than social work and at least three (3) years of social work experience under the supervision of a social worker with a master's degree;
- (5) A physical therapist;
- (6) An occupational therapist;
- (7) A speech pathologist;
- (8) An audiologist;
- (9) A registered nurse;
- (10) A recreation therapist; or
- (11) A rehabilitation counselor

In view of the foregoing, the petitioner has established that the proffered QMRP position is a specialty occupation. As such, the petitioner has overcome this portion of the director's objections.

The director also found that the beneficiary was not be qualified to perform the duties of the proffered position because he holds an unrelated degree in business administration, and he is not licensed by the State of California. On appeal, counsel states, in part, that the beneficiary meets the requirements set forth in 42 C.F.R. §§ 483.430 and 483.430(b)(5)(x) for QMRPs, which, state, in part, that an individual must have at least one of experience working directly with persons with mental retardation or other developmental disabilities, and a bachelor's degree in a human services field including, but not limited to sociology, special education, rehabilitation counseling, and psychology. Counsel states further that the beneficiary has a foreign bachelor's degree in business administration, a foreign master's degree in commerce, and is also one class short of obtaining a U.S. master's degree in business administration. Counsel also states that the beneficiary has related training and work experience. The beneficiary's qualifications are noted. The beneficiary, however, does not hold one of the required degrees described above, in accordance with the C.C.R., Title 22, Division 5, Chapter 8.5, Article 1, Section 76830 (a). It is also noted that the record does not contain an evaluation of the beneficiary's credentials from a service that specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Nor does the record contain an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D). Further, a review of the website at [http://www.dds.ca.gov/ICF/ICF\\_QMRP\\_Requirements.cfm](http://www.dds.ca.gov/ICF/ICF_QMRP_Requirements.cfm) finds that California's Department of Developmental Services (DDS) must review and approve all QMRPs. The record, however, does not contain any evidence that the DDS has approved the beneficiary as a QMRP. Thus, the record does not establish that the beneficiary is

qualified to perform the services of the proffered position. For this reason, the petition may not be approved. 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.