

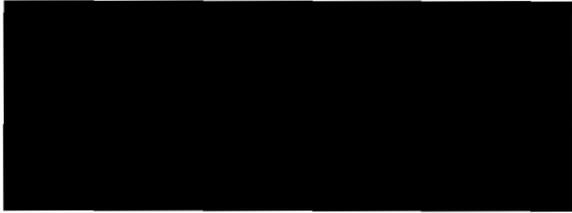
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U.S. Citizenship
and Immigration
Services

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FILE: SRC 03 211 51510 Office: TEXAS SERVICE CENTER Date: SEP 18 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 Director, Texas 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 hospital and seeks to employ the beneficiary as a patient advocate. Accordingly, 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).

On February 5, 2004, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation. The director subsequently reopened the matter but ultimately denied the petition on January 28, 2005. On appeal, counsel for the petitioner asserts the director erred when making her decision.

The record contains: (1) the Form I-129 filed July 25, 2003 and supporting documentation; (2) the director's September 30, 2003 request for evidence (RFE); (3) counsel's December 18, 2003 response to the director's RFE and documentation; (4) the director's February 5, 2004 denial decision; (5) the Form I-290B and counsel's brief in support of the appeal;¹ (6) counsel's January 11, 2005 motion to reopen the director's denial decision; (7) the director's January 28, 2005 denial decision; and (8) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue in this matter is whether the petitioner has established that the proffered position is 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

¹ The director failed to forward counsel's timely filed Form I-290B and appeal brief to the AAO; counsel submitted a motion to reopen the matter pointing out the director's error. The director granted the motion, but ultimately determined that the petitioner had not established the proffered position as a specialty occupation and denied the petition.

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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner seeks the beneficiary's services as a patient advocate. In a July 21, 2003 letter, the petitioner described the duties of the proffered position as follows:

The duties of this position are to work in close collaboration with physicians and other health care personnel in patient evaluation and treatment. In addition, the duties include monitoring, evaluating, and recording patient progress according to measurable goals described in [the] treatment and care plan.

The petitioner noted that the minimum requirement for this position is a Bachelor's of Science degree in nursing or a related field.

On September 30, 2003, the director informed the petitioner that the duties described are commonly performed by nurses and requested documentary evidence to demonstrate that the proffered position is a specialty occupation. The director also requested evidence that the beneficiary had a certificate from the Commission of Graduates of Foreign Nursing Schools (CGFNS) and that the beneficiary is licensed as a registered nurse in Texas.

In a December 10, 2003 response, counsel for the petitioner noted that the positions of "nurse" and "patient advocate" were different positions with distinct duties and job requirements. Counsel also noted that the beneficiary does not have a certificate from CGFNS and is not licensed to practice as a nurse in Texas and that the petitioner did not require a certificate or a nursing license for the position.

In a December 8, 2003 letter attached to counsel's response, the petitioner stated: "patient advocates are not licensed nurses because they do not administer medication and do not perform the duties associated with a nurse." The petitioner also indicated:

Although patient advocates work in collaboration with physicians and other health care personnel in patient evaluation and treatment, they are not nurses. The patient advocate's duties, under the general supervision of the Quality Manager, are to: serve as a liaison between the patient, family, physicians and the Hospital to promote mutual understanding of needs and responsibilities of all parties involved in the care process; develop and implement activities to promote consistency in approaches to patient questions, problems and concerns; develop goals and objectives for the Customer Satisfaction Program; assist patients and families in understanding the philosophy, policies and procedures of the hospital through direct contact and discussion of problems or concerns; assist the hospital staff in increasing awareness of the perception of the hospital experiences of patients and families; serve as an intermediary to Hospital Administration on behalf of patients and families; and collect and present data regarding patient and family satisfaction with service to enhance the Hospital's performance and improvement efforts.

The petitioner stated that it required a bachelor's degree for the position of patient advocate and that it had hired other patient advocates who have bachelor's degrees in nursing. The petitioner provided a copy of its January 31, 2003 posting for the position that indicated its minimum requirement for the position of patient advocate is a bachelor's of science in nursing.

Counsel also provided an excerpt from the Western Washington Area Health Education Center (WWAHEC) website describing the position of "patient representative." The WWAHEC reported that patient representatives "work with hospital or medical center patients and their families to address concerns or special needs that may arise in the course of treatment." The WWAHEC excerpt noted:

[t]here are no official, specific requirements for this field. Hospitals and other employers establish their own educational and work experience requirements to meet the specific needs of their institution and community. A significant number of people entering this profession have health backgrounds. The National Society for Patient Representatives and Consumer Affairs suggests that persons in this profession have education or experience in human relations/human services, communications, supervision, management, conflict negotiation, and medical terminology. Most employers require a Bachelor's degree.

Counsel provided an excerpt from a second website, Healthcare Career Information, that provided a similar job description for a patient representative as the WWAHEC website. The Healthcare Career Information website indicated that students should take challenging high school courses and noted that requirements differ, but most employers prefer college graduates with backgrounds in health or social services and that experience or course work in conflict resolution is also valued.

On February 5, 2004, the director determined: that even though most employers might require a bachelor's degree it does not mean that it is the standard for the position; that even though the petitioner's job posting

noted that a bachelor's degree is desired, it did not mean that all the petitioner's patient advocates had a degree; and that it is not sufficient for the petitioner to assert that the position requires a degree without supporting the assertion with documentary evidence. The director concluded that the petitioner had failed to establish that the position meets one of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On motion, counsel for the petitioner asserts: the position of patient advocate may include some nursing duties but that it is a distinct position from that of a nurse; the position is so complex or unique that it can only be performed by an individual with a bachelor's degree or even higher education in nursing; the petitioner has hired other patient advocates who have a bachelor's degree in nursing; the petitioner's minimum requirement for the position is a bachelor's of science degree in nursing; and the duties of the position are akin to the duties of a social worker, medical and psychiatric, as listed in the *Dictionary of Occupational Titles (DOT)*, a position that requires a bachelor's degree. Counsel submits a March 29, 2004 letter from a medical doctor indicating: that he has been involved in the field of patient care at hospitals for 20 years; that he has reviewed the description of duties for the petitioner's position of patient advocate; and that the requirement of a nursing degree is common to the industry, in parallel positions among hospitals and that "it" is a minimum requirement. The doctor concludes that the position of patient advocate is a specialized position that is filled by a person who has a bachelor's degree or even higher education in nursing and that the position is so complex or unique that it can only performed by an individual with such a degree.

On January 28, 2005, the director denied the petition determining that the petitioner did not submit documentary evidence to substantiate the medical doctor's March 29, 2004 letter nor did the record demonstrate either complexity or uniqueness as to require a bachelor's level preparation in the field of nursing. The director observed that the position of registered nurse is not a specialty occupation and determined that the similarity or overlap of duties between a patient advocate position and a nursing position, likewise made the patient advocate position not a specialty occupation. The director noted the petitioner's claim that it had hired one other patient advocate with a bachelor's degree but also noted that the record did not contain a reasonable sampling of the credentials of the petitioner's patient advocates. The director again determined that employers' preference is insufficient to establish that that a bachelor's degree in a specific specialty is required. The director concluded that the petitioner had failed to establish the proffered position as a specialty occupation.

On appeal counsel for the petitioner asserts that the director improperly required that the petitioner meet all four of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), when satisfaction of one criteria is sufficient to establish a position as a specialty occupation. Counsel contends that the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), because it normally requires a degree or its equivalent for the position. Counsel claims that the petitioner has shown that it has hired another patient advocate with a bachelor's degree in nursing. Counsel re-submits the brief submitted on motion in support of the appeal.

Counsel's assertions and argument are not persuasive. Although counsel asserts on appeal that the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) and does not appear to contend on appeal that the petitioner has satisfied the other criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A); the AAO will consider each criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), as did the director, to determine whether the petitioner has satisfied any one of the criterion.

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. To make this determination, the AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)*, for its information about the duties and educational requirements of particular occupations. In this instance, the only mention of a "patient representative" in the *Handbook* pertains to an interviewing clerk, a position that involves obtaining all preliminary information required for a patient's record or for his or her admission to a hospital, assigning patients to rooms, escorting or summoning escorts to take patients to their rooms, scheduling diagnostic and surgical work, and preparing and routing records. The description of the duties of a "patient representative" as outlined in the *Handbook* does not correlate to the duties the petitioner described for its proffered position. The *Handbook* does not describe the position of patient advocate. As the director noted, the proffered position includes duties that are similar to the duties of a nurse. The 2006-2007 edition of the *Handbook* reports that registered nurses:

[P]erform basic duties that include treating patients, educating patients and the public about various medical conditions, and providing advice and emotional support to patients' family members. RNs record patients' medical histories and symptoms, help to perform diagnostic tests and analyze results, operate medical machinery, administer treatment and medications, and help with patient follow-up and rehabilitation.

The petitioner's initial description of the duties of the proffered position closely corresponds to the basic duties of a nurse. As the petitioner clarified in response to the director's RFE, a patient advocate does not administer medication, thus does not need to be licensed. However, the deletion of a critical duty does not elevate the position of patient advocate to a position that requires a higher level of education than that required for a registered nurse. The AAO now turns to the petitioner's expansion on the duties of the proffered position submitted in response to the director's RFE to determine if any of the additional duties would require the employee performing the duties to obtain a baccalaureate or higher level of education. The petitioner's description of the proffered position's duties seems to focus on the patient advocate's service as a liaison or intermediary between the patient, family, physicians, and the hospital to promote understanding of policies, philosophy, and procedures through direct contact and discussion and to enhance the hospital's performance regarding patient and family satisfaction with the services received. The AAO cannot determine from the generality of the nature of the duties described that acting as an intermediary or liaison in a hospital setting would require a baccalaureate degree or its equivalent as the norm for entry into the position.

The AAO notes counsel's reference to the *DOT* and assertion that a patient advocate's duties are akin to the duties of a medical or psychiatric social worker. However, the *Handbook* indicates that medical/health social workers provide psychosocial support needed to cope with chronic, acute, or terminal illnesses, as well as advising family caregivers, counseling patients, and helping plan for patients' needs after discharge from hospitals. The description of medical/health social workers does not correspond to the petitioner's description of the duties assigned to its position of patient advocate. The AAO further notes that it does not consider the *DOT* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. The *DOT* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. 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.

The AAO also considers counsel's reference to two websites that identify the duties of a patient representative and the educational requirements for this position. As the director observed, neither website identifies a degree requirement in a specific discipline as necessary for employment in this position. Both websites indicate that a background in health or social services is often preferred but also note that experience or course work in conflict negotiation or resolution is also useful. The WWAHEC website notes that employers generally establish their own educational and work experience requirements to meet the specific needs of the institution or the community. The information provided in these websites does not establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position. The petitioner has not provided sufficient evidence to establish that the position of a patient advocate requires the attainment of a bachelor's degree in a specialized field of study. The AAO concludes that the record does not demonstrate that the proffered position satisfies the requirement of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner may qualify the proffered position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree. The petitioner provides a March 29, 2004 letter from a medical doctor wherein the doctor asserts that the requirement of a nursing degree is common for parallel positions in the industry. However, a nursing degree is not necessarily a four-year degree as required for a specialty occupation. Moreover, as the director observed, the letter contains the doctor's assertions but does not include evidence to substantiate those assertions. Although the doctor indicates he reviewed the petitioner's description of the duties of its patient advocate, the doctor does not indicate the basis for his conclusions, other than his 20 years of service. The doctor does not give sufficient details about the complexity of the duties of a patient advocate in relation to the petitioner's business or provide documentary information to substantiate that the requirement of a bachelor's of science nursing degree is commonly required by hospitals. There is an inadequate factual foundation established to support the doctor's opinion. The AAO may, in its discretion, use as advisory opinion 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 AAO is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than that of a position providing liaison services in a hospital setting or that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in a specific field.

Moreover, a review of the evidence of record finds it insufficient to establish the proposed duties as a position that is identifiable with an industry-wide educational standard, or distinguishable, by its unique nature or complexity, from a similar but non-degree-requiring position. As observed above, the information provided by the WWAHEC and Health Career Information websites do not establish an industry-wide standard for the position but seem to recognize a variety of educational and training backgrounds suitable for the position. In addition, the websites note that each employer and community may have their own specific criteria. The record is insufficient to establish that a degree requirement is common to the industry in parallel positions

among similar organizations. The opinion of the doctor and the information on the websites notwithstanding, the record does not establish either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

On appeal, counsel for the petitioner reiterates that the petitioner has previously hired one patient advocate with a bachelor's degree in nursing. To determine whether the petitioner has fulfilled the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(3), the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, as the director specifically observed in her decision, the petitioner has not provided a reasonable sampling of the credentials of its former or current patient advocates. The record does not include the names, transcripts or degrees, dates of employment, or duties of individuals hired for this position. It is not sufficient for the petitioner to claim that it has hired one patient advocate that has a four-year nursing degree without documenting the claim. 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 this matter, the petitioner has not submitted documentary evidence of its past hiring practices. Further, the AAO determines that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, than any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. The petitioner has not provided evidentiary documentation establishing the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific discipline and, therefore, establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The petitioner's description of the duties of the proffered position does not include duties that are complex or specialized. The described position includes generalized tasks that a non-degreed individual could successfully perform. The information in the record does not demonstrate how the execution of the proffered position's tasks entails duties that can normally only be accomplished by an individual with a four-year degree in a specialty field. Counsel's assertion that the specific duties of the proffered position are so specialized and complex are not substantiated in the record. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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). Neither the description provided nor the medical doctor's assertion establish that the duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. In this matter, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4).

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.