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U.S. Citizenship
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FILE: LIN 05 186 51817 Office: NEBRASKA SERVICE CENTER Date:

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.

A handwritten signature in black ink, 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 The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is an outpatient rehabilitation facility that provides ancillary therapy services (including physical, speech, and occupational therapy services, among others) to clients who are generally referred by other medical providers. It seeks to employ the beneficiary as a rehabilitation services coordinator and endeavors to classify her 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 was not a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be determined is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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:

[A]n 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.

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 are 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 proceedings before the AAO contains: (1) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a rehabilitation services coordinator. Evidence of the beneficiary's duties includes the Form I-129 petition with attachments and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would:

- Coordinate the rehabilitative services provided by the petitioner and review the work of physical therapists, occupational therapists, and physical therapist assistants;
- Act as liaison between patients and medical providers;
- Evaluate patient medical records, applying quality assurance criteria;
- Compile statistical data and write narrative reports summarizing quality assurance findings;
- Review patient records applying utilization review criteria to determine the need for rehabilitation services and continued care;
- Schedule patients for treatment and evaluations;
- Prepare reports and records by department/facility personnel;
- Maintain inventory of materials and supplies for the department/facility;
- See that all referral sources are advised of department/facility action with referred cases;
- Maintain a patient treatment schedule consistent with the needs of the department/facility and its patients;

- Confer with person(s) most closely associated with the active management of the patient and keep them informed of any additional patient needs, treatment modifications, and/or progress;
- Assure that patients are treated without bias on account of age (e.g., infants, children, adolescents, adults, geriatrics, elderly), race, creed, gender, or disability;
- Respect and understand patient rights to treatment and the right to involvement in treatment decisions;
- Practice ethical responsibility based on the cultural, ethnic and religious beliefs of the patients served and applicable law;
- Prepare and submit reports, assuring confidentiality of records including: evaluation reports/summaries; discharge reports/summaries; progress reports to referring physicians and agencies; current progress notes on all patients; special reports requested by the director and/or his designee; and daily attendance records and summaries;
- Attend department/facility manager meetings;
- Hold regular department/facility meetings to: report on and discuss the activities and needs of the department/facility; discuss patient needs and progress; discuss reports and records; and discuss expansion in terms of future goals and needs;
- See that all department/facility routines and procedures are carried out as outlined;
- Delegate portions of her duties to department/facility personnel with approval of the director in line with the best use of time and personnel experience;
- Assist with recruitment of applicants for positions;
- Orient new personnel to programs and procedures;
- Assist the director or designee in planning new programs to be developed within the department/facility;
- Keep current and adhere to policies and procedures as enumerated in the policy and procedures manual;
- Assist the director or designee with the revision of operational procedures with department personnel as necessary;
- Participate and adhere to all policies and procedures as enumerated in the risk management program; and

- Assure: HIPAA compliance; good public relations; protection of confidential data; economic use of time, equipment, and supplies; and maintain the safety and welfare of patients and employees.

The petitioner requires a minimum of a bachelor's degree in a healthcare related field, preferably physical therapy, occupational therapy or speech therapy for entry into the proffered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position, though varied, are essentially those noted for medical and health services managers. The *Handbook* notes that a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations. Physicians' offices and some other facilities may substitute on-the-job experience for formal education, and do not require a baccalaureate level education at all. In this instance, however, the beneficiary would perform the duties of a health services manager in a healthcare organization that has 16 employees, a gross annual income exceeding \$1,000,000, and offers rehabilitative services to the general public. The beneficiary's duties include the supervision of therapists whose professions require licensing and baccalaureate level educations. As noted above, a baccalaureate level education in an appropriate field is adequate for entry-level positions in smaller facilities and at the departmental level within health care organizations. The record in this instance establishes that a bachelor's degree is normally the minimum requirement for entry into the proffered position. The petitioner has established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) and the position qualifies as a specialty occupation.

This matter must, however, be remanded to the director to determine whether the beneficiary is qualified to perform the duties of the offered specialty occupation. The director did not make that determination as the petition was denied on another ground. The record indicates that the beneficiary possesses a provisional degree certificate for a bachelor of physiotherapy degree from a foreign educational institution. The record does not, however, contain an evaluation of that degree from a credentials evaluation service to determine if the degree is equivalent to a bachelor's degree in an appropriate field from an accredited college or university in the United States. The director may request such additional information as he or she deems appropriate in making that determination.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion, which, if adverse to the petitioner, shall be certified to the AAO for further review.