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20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: LIN 05 171 52268 Office: NEBRASKA SERVICE CENTER Date: **MAY 02 2008**

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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The petitioner then filed a motion to reconsider. The director considered the petitioner's motion, and again denied the petition. 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 healthcare business.<sup>1</sup> It seeks to employ the beneficiary as a quality assurance supervisor 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 stating that the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

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), 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;

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<sup>1</sup> The petitioner states that it has a gross annual income of \$1,000,000, and that it employs in excess of 40 people including all full time, part time, and contract healthcare employees.

- (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 proceeding 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; (5) the petitioner’s motion to reconsider; (6) the director’s decision on the motion to reconsider; and (7) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

**The petitioner is seeking the beneficiary’s services as a quality assurance supervisor. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:**

- Establish and revise policies, standards of performance and procedure manuals;
- Research new approaches to medical services;
- Plan, oversee and coordinate quality assurance and training programs to maintain proficiency of staff in the use of new methods, techniques and equipment to meet patients’ needs;
- Plan and oversee medical record keeping criteria and procedures in conformance with standards of accrediting agencies, insurance requirements, and federal, state and local statutes;
- Coordinate departmental expansions and the allocation of personnel to maintain and improve patient care; and
- Develop criteria for the evaluation of medical staff.

The duties set forth above are described in greater detail by the petitioner’s Chief Executive Officer (CEO) in his affidavit of September 1, 2005. The petitioner requires a minimum of a bachelor’s degree in nursing, health care administration, or a closely related field for entry into the offered 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. Many of the duties detailed by the petitioner are performed by nurses in the healthcare industry. The *Handbook* does not elaborate on administrative nursing positions within this classification, although the *Handbook* does note:

Some nurses move into the business side of health care. Their nursing expertise and experience on a healthcare team equip them with the ability to manage ambulatory, acute, home health, and chronic care. Employers – including hospitals, insurance companies, pharmaceutical manufacturers, and managed care organizations, among others – need RNs for health planning and development, marketing, consulting, policy development, and quality assurance. . . .

The *Handbook*, 2006-2007 edition at page 305, 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 (ADN), and a diploma. BSN programs, offered by colleges and universities, take about 4 years to complete. . . . ADN programs, offered by community and junior colleges, take about 2 to 3 years to complete. . . . Diploma programs, administered in hospitals, last about 3 years. . . . 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 bachelor's or master's degree. A bachelor's degree often is necessary for administrative positions and 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. . . .

The proffered position appears to resemble a nursing position beyond the entry-level registered nurse. A Citizenship and Immigration Services (CIS) policy memo provides the following commentary on administrative nursing positions: "Nursing Services Administrators are generally supervisory level nurses who hold an RN, and a graduate degree in nursing or health administration. (See Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook* at 75.)" The *Handbook* reference is to the classification of medical and health services managers.<sup>2</sup> On page 75, the *Handbook* states:

The term "medical and health services manager" encompasses all individuals who plan, direct, coordinate and supervise the delivery of healthcare. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system.

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<sup>2</sup> Memorandum from Johnny N. Williams, Executive Associate Commissioner, INS Office of Field Operations, Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses, HQISD 70/6.2.8-P (November 27, 2002).

A review of the *Handbook* finds no requirement of a baccalaureate or higher degree in a specialized area to perform the duties normally performed by quality assurance personnel or managers. Any of the three major educational career paths to registered nursing, noted above, are sufficient for the beneficiary to perform the nursing/quality assurance duties associated with the proffered position. Experience and good performance can lead to promotion for a registered nurse to more responsible positions, such as assistant head nurse or head nurse/nurse supervisor. Likewise, good performance and experience can equip a nurse to perform the duties of a quality assurance coordinator or supervisor in the healthcare field. The *Handbook* does not indicate that a position with duties as described in this record of proceeding would normally require a baccalaureate or higher degree or its equivalent in a specific specialty as a minimum requirement for entry into that position. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support of that assertion provided copies of job advertisements for nursing and quality assurance positions. The advertisements submitted, however, do not establish the petitioner's assertion. It cannot be determined from the advertisements that any are from organizations similar in nature and scope to that of the petitioner. For example, advertisements were submitted from hospitals, staffing organizations, large employers of mental health professionals, a university medical center, a non-profit community-based health care delivery network, healthcare systems, a provider of pediatric services, a county medical center, a Fortune 500 company that is a nationwide operator of long-term acute care hospitals, and a company managing prescription benefits. None of the advertisements appear to be from home healthcare businesses similar in nature and scope to that of the petitioner. Further, the vast majority of advertisements submitted do not require a baccalaureate level education, but simply indicate a preference for a bachelor's degree. This is consistent with findings in the *Handbook* which states that some registered nurses move into the business side of healthcare and work in quality assurance. As previously noted, the *Handbook* does not state that registered nurses need a baccalaureate level education to perform duties in the quality assurance field.

The petitioner also submitted statements from two home healthcare agencies to establish an industry standard for the offered position. One agency states that it only employs quality improvement coordinators who hold a bachelor's degree in nursing or greater in a health related field. The other requires a bachelor's degree in nursing, physical therapy or a closely related field for its quality improvement coordinator. Neither agency, however, provided documentation substantiating that they employ quality improvement coordinators, or that any such coordinators actually have a bachelor's degree in a related field. Simply going on the 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 190 (Reg. Comm. 1972)). Further, statements from two employers is insufficient in scope to establish an industry standard for the education required of quality assurance supervisors or related personnel. The petitioner has failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations. Therefore, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) has not been satisfied.

The petitioner states that it normally requires a degree or its equivalent for the offered position. To determine whether a proffered position may be established as a specialty occupation under the third criterion – the employer normally requires a degree or its equivalent for the position – the AAO usually 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. In the instant case, the petitioner states that its past quality assurance supervisors/coordinators had bachelor's degrees in nursing. The petitioner did not, however, provide copies of those employees' diplomas or other

documentary evidence from the educational institutions where their degrees were obtained establishing their educational credentials. Simply going on the 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 190 (Reg. Comm. 1972)). Further, even where a petitioner establishes a sustained, continuous history of recruiting and hiring only persons with at least a bachelor's degree in a position-related specialty, CIS must examine the ultimate employment of the alien, and determine whether actual performance of the duties of the position qualifies as a specialty occupation because of the extent and educational level of highly specialized knowledge that must be applied in order to perform the job. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. The evidence of record does not establish such a knowledge requirement. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has not been established.

The petitioner has not established that the duties of the proffered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty. Nor has it been established that the duties of the offered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As described by the petitioner, the duties to be performed appear to be routine for quality assurance supervisors and related positions in the industry. Counsel for the petitioner, in his letter of September 12, 2005 (the petitioner's response to the director's request for evidence), states that the duties of the offered position are very similar to those described in the *Dictionary of Occupational Titles (DOT)* for quality assurance coordinators. The *DOT* generally describes the duties of various positions in their respective industries. The AAO agrees that the duties of quality assurance coordinators detailed in the *DOT* are similar to the duties of the present position, which are routinely performed in the industry by persons holding those positions. The evidence of record does not establish that the duties of this position are more complex or unique than the duties that quality assurance supervisors normally perform in the industry, who are not required to have a baccalaureate level education in a specific specialty. Further, the record does not establish that the duties of the proffered position are more specialized and complex than the duties that quality assurance supervisors normally perform in the industry, who do not hold a baccalaureate level education. For example, the record does not establish that a baccalaureate level education is required to : establish and revise policies, standards of performance and procedure manuals; plan, oversee and coordinate quality assurance and training programs; plan and oversee medical record keeping criteria and procedures in conformance with standards of accrediting agencies, insurance requirements, and federal state and local statutes; or to develop criteria for the evaluation of medical staff. As noted in the *Handbook*, the training received by registered nurses who hold less than a baccalaureate level education is sufficient to perform these duties, as those nurses routinely work in quality assurance positions.

Counsel's assertions regarding the *Dictionary of Occupational Titles (DOT)* SVP rating for the offered position are also unpersuasive. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

Finally, the petitioner asserts that a previous agency decision has classified the offered position as a specialty occupation. This reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire record of proceeding in the petition referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). While 8 C.F.R. § 103.3(c) provides that Immigration and Naturalization Service precedent decisions are binding on all Citizenship and Immigration Services (CIS) employees in the administration of the Act, unpublished decisions are not similarly binding. It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. In the present matter, the petitioner has offered the beneficiary a position as a quality assurance supervisor. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error and a violation of 8 C.F.R. § 214.2 paragraph (h).

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations. 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 and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.