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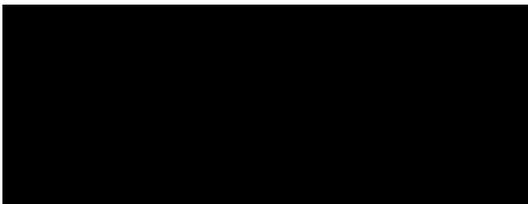
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FILE: EAC 04 005 50266 Office: VERMONT SERVICE CENTER Date: 2/11/15

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be summarily dismissed. The petition will be denied.

The petitioner describes itself as a provider of health care services. It seeks to employ the beneficiary in a nursing position and to classify him 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 on the grounds that the record failed to establish that the proffered position qualified as a specialty occupation or that the beneficiary was a licensed registered nurse in the intended state of employment, as required for him to be qualified to perform the services of the position.

The proffered position – which the petitioner initially termed simply “a nurse in a hospital” – was described by the petitioner in its response to the director’s request for evidence as a “nurse supervisor” with the following duties:

Supervises and coordinates activities of nursing personnel in community health agency; serves as liaison between staff and administrative personnel. Develops standards and procedures for providing nursing care and for evaluating service. Provides orientation, teaching, and guidance to staff to improve quality and quantity of service. Evaluates performance of personnel and interprets nursing standards to staff, advisory boards, nursing committees, and community groups. Recommends duty assignment of nursing personnel and coordinates services with other health and social agencies to render program more effective. Reviews, evaluates, and interprets nursing records, vital statistics, and other data affecting health service in order to assess community needs and to plan and implement programs to meet these needs. Assists in planning educational programs for nurses, related professional workers, and community groups to meet needs of personnel and practitioners. Assists in preparation of agency budget. May plan for and participate in field research related to community health nursing.

Based on the evidence of record, the director found that the proffered position did not meet the statutory definition of a specialty occupation in section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), or any of the regulatory criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal the petitioner asserts that the proffered position is a specialty occupation, requiring the theoretical and practical application of a body of highly specialized knowledge and a bachelor’s degree in nursing, because it is a “nurse administrator” position. In a letter accompanying the appeal the petitioner described the duties of the position as follows:

A Nurse Administrator is a person who directs administration of hospital, nursing home, or other health care facility within authority of governing board: Administers fiscal operations, such as budget planning, accounting, and establishing rates for health care services. Directs hiring and training of personnel. Negotiates for improvement of and additions to buildings and equipment. Directs and coordinates activities of medical, nursing, and administrative staffs and services. Develops policies and procedures for various establishment activities. May represent establishment at community meetings

and promote programs through various news media. May develop or expand programs or services for scientific research, preventive medicine, medical and vocational rehabilitation, and community health and welfare promotion.

The duties of the nurse administrator position described in the appeal are completely different from the duties of the nurse supervisor position described prior to the director's decision. Whereas the nurse supervisor position involves the direct supervision of a nursing staff, the nurse administrator position involves the administration of an entire healthcare facility. A petitioner may not make material changes to its petition in an effort to make a deficient petition conform to legal requirements. *See Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm. 1998). "The AAO cannot consider facts that come into being only subsequently to the filing of the petition." *Id.* at 176. Accordingly, the new position description and supporting documentation submitted on appeal cannot be considered by the AAO in adjudicating the appeal.

As specified in 8 C.F.R. § 103.3(a)(1)(v), "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." The petitioner has not specifically identified any erroneous conclusion of law or statement of fact in the director's decision. Accordingly, the instant appeal must be summarily dismissed.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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