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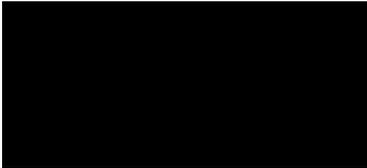
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
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Services

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FILE: WAC 03 220 51189 Office: CALIFORNIA SERVICE CENTER Date: FEB 25 2005

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:



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, Director
Administrative Appeals Office

DISCUSSION: The director of the 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 licensed intermediate care facility for the developmentally disabled. It seeks to employ the beneficiary as a qualified mental rehabilitation professional. The petitioner, therefore, 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 rehabilitation professional (QMRP). Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail supervising implementation of individual service plans; integrating the facility's program plan; assuring continuity of facility services with outside agencies; and recording each clients' progress and initiating periodic review of their individual service plans. In coordination with an interdisciplinary team, the beneficiary will review and update pre-admission evaluations; assess the developmental status of clients; write an evaluation for developing individual service plans and review the progress of clients; supervise clients; provide staff training; and perform the evaluation, revision, and monitoring of clients' active treatment plans. The job description entitled "QMRP/Administrator Duty Statement" describes additional job duties. The petitioner refers to Section 76830 of Title 22 of the California Code of Regulations and 42 C.F.R. § 483.430 to indicate the educational requirements of the proffered position.

The director determined that the proffered position did not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A), and that the petitioner's job description was vague, not explaining day-to-day duties.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel refers to 42 C.F.R. § 483.430 to assert that a QMRP is an "individual who holds at least a bachelor's degree in a professional category," and refers to Section 76830 of Title 22 of the California Code of Regulations to claim that the proffered position requires at least a bachelor's degree. Counsel states that the petitioner's job description explained daily, weekly, and monthly duties.

Upon review of the record, the petitioner has not established that the proffered position is a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge,

and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The regulation at 42 C.F.R. § 483.430 states that a QMRP is an “individual who holds at least a bachelor’s degree in a professional category” and occupies a particular occupation such as a registered nurse or occupational therapist; it states that professional staff must be licensed, certified, or registered. Section 76830 of Title 22 of the California Code of Regulations defines a QMRP as a physician, an educator with a degree in education, a social worker with a bachelor’s degree, a physical therapist, an occupational therapist, an audiologist, a registered nurse, a recreation therapist, and a rehabilitation counselor. Further, Section 76135 of Title 22 of the California Code of Regulations states that a QMRP means “a person who is a physician, psychologist, social worker, special education teacher, physical or occupational therapist, speech pathologist or audiologist, registered nurse, rehabilitation counselor, or recreation therapist and who has at least one year’s experience or training in the care of the developmentally disabled.”

The AAO observes that the petitioner did not explicitly state which one of the occupations set forth in Sections 76830 and 76135 of Title 22 of the California Code of Regulations that the beneficiary will occupy. Although the petitioner’s September 11, 2003 letter implies that the beneficiary will occupy a position as an educator, the petitioner does not elaborate on this. Further, the federal and state regulations pertain to an intermediate care facility/developmentally disabled—habilitative. No evidence in the record establishes that the petitioner operates such a facility. The submitted brochure entitled “Great Endeavors, Adult Day Health Care Center” does not evince that the petitioner operates an intermediate care facility/developmentally disabled—habilitative. The request for evidence dated September 29, 2002 sought a copy of the license that authorizes the petitioner to operate an intermediate care facility. The petitioner responded by stating that the facility license was enclosed in the response, but the evidentiary record does not contain this document. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Consequently, counsel’s reference to the regulations pertaining to a QMRP employed by an intermediate care facility/developmentally disabled—habilitative, does not establish that the proffered position requires at least a baccalaureate degree because no evidence demonstrates that the petitioner operates an intermediate care facility/developmentally disabled—habilitative. As such, the AAO cannot conclude that the proffered position is a QMRP as defined in the regulations.

The second criterion requires that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed above, the proffered position cannot be concluded to be a QMRP. Thus, the petitioner cannot establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there evidence in the record to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Once again, the proffered position cannot be concluded to be a QMRP as defined in the regulations. As such, the petitioner cannot establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Beyond the decision of the director, the petitioner did not explicitly state which one of the occupations set forth in Sections 76830 and 76135 of Title 22 of the California Code of Regulations that the beneficiary will occupy; thus, the AAO cannot determine whether the beneficiary is actually qualified for the proffered position. Although the petitioner's September 11, 2003 letter implies that the beneficiary will occupy a position as an educator, the petitioner does not elaborate on this. Nevertheless, the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), a resource that the AAO often consults to determine the educational requirements of particular occupations, indicates that all 50 states and the District of Columbia require special education teachers to be licensed. Thus, even if the petitioner establishes that it is an intermediate care facility/developmentally disabled—habilitative, the beneficiary may not be qualified to perform the proffered position because no evidence in the record shows that the beneficiary possesses the appropriate license.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. 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.