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U.S. Citizenship
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FILE: EAC 03 120 52212 Office: VERMONT SERVICE CENTER

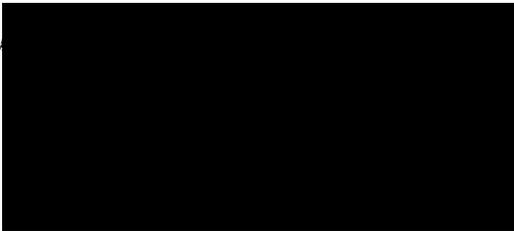
Date: MAY

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, 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 home for adults. It seeks to employ the beneficiary as a medication supervisor. 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 and previously submitted evidence.

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 medication supervisor. 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 preparing and assisting residents with medication; preparing monthly documents and documentation for the residents' files and charts; researching and dealing with individual medication problems; liaising with doctors and pharmacies; supervising employees to ensure they comply with medication room policies and procedures; and training new employees. The petitioner indicated that the proposed position requires a bachelor's degree in nursing.

The director determined that the proffered position is not a specialty occupation. According to the director, the petitioner's job description does not indicate that it requires a bachelor's degree in a related specialty as a prerequisite for entry into the proffered position. The director stated that the beneficiary will function as a registered nurse (RN) and medication supervisor, and that the Department of Labor's (DOL) *Occupational Outlook Handbook* reveals that a nursing home nurse, which is similar to the proposed position, does not require a bachelor's degree in nursing to perform first-line supervisor nursing duties. The director stated that the nursing industry distinguishes RNs from advanced practice nurses, and that the petitioner failed to submit evidence to support its contention that the nursing industry distinguishes non-specialized from specialized RNs. The director found that the proposed position is not particularly specialized, complex, or unique within the nursing industry. The director referenced information from the U.S. Department of Health and Human Services, Bureau of Health Professions, to show that an RN does not require a bachelor's degree. The director gave little weight to the AANC's position statement and the submitted job postings. The director noted that the evidence in the record did not show that the beneficiary holds licensure to practice as a registered nurse in New York.

On appeal, counsel states that New York's statutory code and the *Handbook*, which indicates that the proposed position is managerial in nature, show that a license is not required for the proposed position. Counsel asserts that the proposed position requires a bachelor's degree because it involves supervising nurse aides.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not 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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* discloses that many of the duties of the proffered position are performed by a licensed practical (LPN), licensed vocational nurse (LVN), and an RN, which the *Handbook* indicates are occupations that do not require a bachelor's degree in nursing. The *Handbook* describes an RN as ensuring that records are maintained and equipment and supplies are ordered, supervising nursing aides, administering medications, and providing or arranging for training. LPNs and LVNs administer medication, supervise nursing aides, monitor patients and report adverse reactions to medications or treatments, supervise nursing assistants and aides. The beneficiary's duty to provide training is performed by an RN, and the beneficiary's duty to supervise nursing aides and prepare and assist residents with medication is performed by RNs, LPNs, and LVNs. The petitioner states that the beneficiary will liaise with doctors and pharmacies, and counsel's July 11, 2003 letter states that the beneficiary will call doctors for prescriptions and the pharmacy on behalf of RNs. Given that the care provided by RNs, LPNs, and LVNs involves administering medications, the duties of such occupations would also include interfacing with doctors and pharmacies about medication.

The beneficiary's duties to prepare monthly documents and documentation for residents' files and charts, research and deal with individual medication problems, and liaise with doctors and pharmacies are vague. The petitioner does not elaborate on the documentation that the beneficiary will prepare or how the beneficiary will handle medication problems. Absent such clarifications, the AAO cannot determine whether the proposed position's duties actually exceed those of an RN, LPN, or LVN. Consequently, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, medication supervisor.

No evidence in the record establishes the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. Although the denial letter discusses various job postings and an AACN position, the record does not contain the referenced postings and AACN statement.

No evidence in the record shows that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that many of the proposed position's duties are performed by RNs, LVNs, and LPNs, which are occupations that do not require a bachelor's degree. With respect to the beneficiary's duties that lack specificity, the AAO cannot determine whether they exceed the duties of an RN, LVN, or LPN.

Similarly, no evidence in the record establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position or the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which 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. As already discussed, the *Handbook* reveals that many of the proposed position's duties are performed by RNs, LVNs, and LPNs, which are occupations that do not require a bachelor's degree. Furthermore, the AAO cannot determine whether the beneficiary's duties that lack specificity exceed those of an RN, LVN, or LPN.

The AAO notes that the *Handbook* reports that all states and the District of Columbia require licensure for an RN, LVN, and LPN. The submitted statutory code for the state of New York is not relevant in establishing that the proposed position does not require a nursing license; it does not exempt a nurse who performs the proposed position's duties from licensure.

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.