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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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File: EAC 00 078 52531

Office: VERMONT SERVICE CENTER

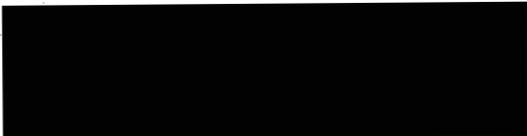
Date: DEC 08 2007

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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a health care facility with a staff of 468 employees and a gross annual income of \$11,552,525. It seeks to employ the beneficiary as a nursing supervisor for a three-year period. The director determined the petitioner had not established the position is a specialty occupation.

On appeal, counsel argues that the position is a specialty occupation and that individuals with bachelor's degrees previously filled the position. Counsel also advised that he would submit a brief within 30 days in support of the appeal. Since the 30-day period of time has now expired and counsel's brief has not yet been received, a decision will be rendered on the record as it is presently constituted.

The regulation at 8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an 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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) that a petitioner could qualify the offered position as a specialty occupation if the petitioner could establish that:

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.

Counsel's argument on appeal is not persuasive. In order to qualify as a specialty occupation it must be established, among other things, that the position requires the attainment of a baccalaureate degree or higher in a specific specialty for entry into the occupation. The record is supported by a statement from the petitioner that clearly states that a baccalaureate degree is not required for the position. The petitioner further provides that a baccalaureate degree is preferred but not a requirement for the position.

Further, the petitioner has not submitted any evidence establishing that it is a state or local requirement for supervisory nurses to possess a baccalaureate degree. In addition, no evidence has been submitted establishing that the petitioner or similar health care facilities have historically hired supervisory nurses with baccalaureate degrees. Finally, the petitioner has not submitted any evidence establishing that the nature of the duties of the position is so specialized and complex that knowledge required to perform the duties of the position is usually associated with a bachelor's degree. As such, it has not been established that this supervisory nursing position is a specialty occupation.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.