



U.S. Department of Justice

Immigration and Naturalization Service

DR

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



File: EAC 00 118 50403

Office: VERMONT SERVICE CENTER

Date: DEC 08 2002

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, 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 company that provides long term care and rehabilitation with 255 employees and a gross income of \$11,000,000. It seeks to employ the beneficiary as an infection control management coordinator for a period of two years. The director denied the petition finding that the petitioner had failed to establish that the position offered to the beneficiary was a specialty occupation.

On appeal, counsel for the petitioner asserts the position is a specialty occupation and submits a brief.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) 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) provides that a petitioner can qualify the offered position as a specialty occupation if the petitioner can 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.

The petition is supported by a description of the duties of the position that indicates that the beneficiary will be responsible for following activities:

Plans, supervises and coordinates all infection control activities in all units of the facility; works with facility's Director of Nursing and assures that all departmental procedures are followed in accordance with established policies on infection control; compares laboratory reports with communicable diseases list to identify conditions that require infection control procedures; advises and consults with physicians, nurses, hospital personnel concerning precautions to be taken to protect patients, staff, and other persons from possible contamination or infection; investigates infection control problems and arranges for follow-up care for persons exposed to infection or disease; instructs and educates hospital personnel in various units on universal and specific infection control procedures; compiles statistical data and writes narrative reports summarizing infection control findings; may oversee personnel engaged in infection control activities.

The director denied the petition finding that the duties of the position were so vague that a determination could not be made that the position qualified as a specialty occupation. The record also reflects that the petitioner was given an opportunity to submit additional evidence in support of the petition.

On appeal, counsel asserts the position is a specialty occupation and cites the Department of Labor's (DOL) Dictionary of Occupational Titles (DOT).

Counsel's argument on appeal is not persuasive. The petitioner has failed to establish that the position meets any of the four standards enumerated above and, as a result, it has not been shown that the position is a specialty occupation.

The petitioner has not submitted any evidence establishing that a baccalaureate or higher degree is normally the minimum requirement for entry into the occupation. It is noted that the director specifically requested that the petitioner submit evidence relating to this issue. It is not sufficient for the petitioner to assert that the position is a specialty occupation. The petitioner bears the burden of establishing that the proffered position is a specialty occupation through the submission of evidence that can be verified through objective means.

In addition, the petitioner has not shown that the degree

requirement is common to the industry in parallel positions among similar organizations. The record does not contain any evidence addressing the educational requirements for this position in similar organizations. Further, the petitioner has not submitted any evidence establishing that it has hired individuals with bachelor's degree for this position in the past. It is noted that the petitioner has been in existence since 1986.

Lastly, the record does not establish that the duties of the position are so complex and specialized that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree. The duties of the position as described by the petitioner are so vague that it is difficult to determine the specific academic training required for their performance. While the petitioner argues that a bachelor's degree in nursing is the only conceivable academic training suitable for this position, the petitioner has not submitted any evidence in support of this assertion. As a result, the director's decision will not be disturbed.

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.