



U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

File: LIN-00-109-53097

Office: Nebraska Service Center

Date: **DEC 21 2001**

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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a home health care provider with 600 employees and a gross annual income of \$12 million. It seeks to employ the beneficiary as a home health nurse for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional evidence.

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.

The director denied the petition because the petitioner had not established that the duties of the proffered position are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. On appeal, counsel asserts that the duties of a home health nurse are so complex and specialized that only a nurse with a bachelor of science in nursing (BSN) can fulfill such duties. Counsel contends that the petitioner currently employs five home health nurses, all of whom hold BSN degrees.

Counsel's statements on appeal are not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In an attachment to the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Responsible for providing direct nursing care to patients with disabilities within the setting of the patients' home; teaching patients and their families about self-care and disease prevention; assessing patients' needs and formulating a health care plan; instructing patients

and families in providing safe and proper care; provide treatments to patients as directed by physicians and/or other health care professionals; referring patients with social emotional problems to the appropriate community referral sources for assistance; determining and [sic] frequency and duration of care and coordinating activities of other professionals and support staff involved in providing care to patients.

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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding.

First, the Service does not agree with counsel's argument that a BSN degree is a minimum requirement for entry into the field of home health nursing. In these proceedings, the duties of the position are dispositive and not the job title. The proffered position is that of a registered nurse working in the field of home health care. According to the Department of Labor's Occupational Outlook Handbook (Handbook) 2000-2001 edition, home health nurses provide periodic services, prescribed by a physician, to patients at home. After assessing patients' home environments, they care for and instruct patients and their families. The Handbook at pages 210-212 does not indicate that there is a requirement of a baccalaureate or higher degree in a specialized area for employment as a registered nurse. The three educational paths to nursing are as follows: Associate degree in nursing (A.D.N.), bachelor of science degree in nursing (B.S.N.), and diploma. The Handbook further states that:

There have been attempts to raise the educational requirements for an R.N. license to a bachelor's degree and, possibly, create new job titles. These changes, should they occur, will probably be made State by State, through legislation or regulation...In fact, many career paths are open only to nurses with bachelor's or advanced degrees. A bachelor's degree is usually necessary for administrative positions and is a prerequisite for admission to graduate nursing programs in research, consulting, teaching, or a clinical specialization.

In attempt to show that a BSN degree is the normal minimum requirement for entry into the field of home health nursing, the petitioner submits a computer printout from the website of the American Nurses Credentialing Center (ANCC). This document indicates that, in order to receive a credential from the American Nurse Association (ANA) as a home health nurse, a nurse must have an active RN license in the United States or its territories; and hold a baccalaureate or higher degree in nursing; and have practiced as a licensed registered nurse for a minimum of 2 years; and, within the past 3 years, have practiced as a licensed registered nurse in home health nursing a minimum of 1,500 hours; and currently practice home health nursing a minimum of 8 hours per week; and have had 20 contact hours of continuing education applicable to the specialty area within the past 2 years. Clearly, the requirements for certification as a home health nurse by the ANCC pertain to nurses who have a baccalaureate degree and at least 2 years of work experience as a registered nurse, as well as a minimum number of hours working in the field of home health nursing. These requirements do not pertain to entry level positions as registered nurses working in the field of home health care.

The petitioner also submitted an advisory opinion letter from Margaret M. Aronson, a registered nurse specializing in community health nursing. Ms. Aronson explains the credentialing program of the ANCC as described above and states that home health nursing is a sub-category of community health nursing which requires a BSN degree. However, as stated above, the ANCC credential is not a requirement for entry into the field of home health nursing, but rather serves as recognition of registered nurses who have attained an advanced level of training and experience in the field of home health nursing. In view of the foregoing, it is concluded the petitioner has not established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Second, the petitioner has not shown that the degree requirement is common to the industry in parallel positions among similar organizations.

Third, while the petitioner asserts that a BSN degree is a minimum requirement for the position in question and indicates that it currently employs five home health nurses, all five of whom hold a BSN degree, no evidence has been submitted to corroborate such assertion.

Finally, the Service does not agree with counsel's argument that the duties of a home health nurse are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The duties of the offered position include the following: providing direct nursing care to patients with disabilities within the setting of the patients' home; assessing patients' needs and formulating a health care plan; instructing patients and families in providing safe and proper care; and providing treatments to patients as directed by physicians and/or other health care professionals. These duties parallel those of registered nurses working in the field of home health care as described in the Handbook. As such, it has not been persuasively established that the duties of the proffered position are so complex that they can be performed only by a nurse possessing a BSN degree.

In view of the foregoing, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

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.