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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

JUN 8 2001

File: WAC 00 066 52533 Office: California Service Center Date:

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)

IN BEHALF OF PETITIONER: [Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, Acting Director
Administrative Appeals Office

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

The petitioner is a skilled nursing facility and sub-acute center. It seeks to employ the beneficiary as a case manager for three years. The director determined the petitioner had not established that the offered position qualifies as a specialty occupation.

On appeal, the petitioner states "The decision is in error in equating the position of Case Manager with a Health Service Manager. While a Health Service Manager is administrative in nature, we maintain that a Case Manager is not. Although the latter position uses the term "Manager" as part of the title, it is not a manager in the regular sense. The Case Manager does not manage an administrative unit, rather, the Case Manager "manages" a patient's treatment plan by participating in the direction of medical care of the patient from admission through discharge, address the issues of health assessment and appropriate medical intervention. This includes the diagnosis of patient's condition; based on patient's condition, to recommend type of treatment that will be given to patient, whether therapy, wound management, monitoring of blood sugar and blood pressure. Wound management includes reduced wound pain and tenderness, rapid healing, limb salvage, reduction in ulcer recurrence, reduction in length of stay. The Case Manager also assesses the family situation. Upon discharge, the Case Manager will determine whether patient can go home or go to a board and care residential hotel, or will require 24 hour supervision. If the patient is going home, the Case Manager has to determine if there are family members who will take care of the patient, or whether the home in general is viable. If the decision is for the patient to go to a board and care, the Case Manager assists in choosing a board and care home that is most appropriate for the patient. Clearly, this position requires a person with special skills in this area, possessing an R.N. degree with long years of experience in medical care, equivalent to a Bachelor's degree, or a Bachelor's degree in Nursing or Medicine."

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), provides, in part, for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

The beneficiary earned a Bachelor of Science in Nursing in 1987 from Ortanez University in Quezon City, Philippines. The beneficiary also earned a Doctor of Medicine degree in 1977 from the Far [REDACTED]

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.

Upon initial submission, the petitioner summarized the duties of the offered position as follows:

Oversee all aspects of managed care patients' rehabilitation or treatment plans from initial evaluation, to discharge planning with social service. Responsible for establishing and maintaining open, effective communication between each facility of the Fountain View Management and the referring facilities, hospital, physician, other consumers and third party payors. Provide maximum flexibility in coordinating payor's needs with patient outcomes and prudent costs. Comprehensive understanding of the competitive health care market as well as the ability to effectively evaluate and develop treatment plans. Able to communicate and effectively influence the facility team's treatment approach. Must be able to maintain a non-adversarial relationship with health care providers.

The duties of a physician are described in the Department of Labor's [REDACTED] 2000-2001 Edition at pages 193 and 194. The [REDACTED] indicates that:

Physicians serve a fundamental role in our society and have an effect upon all our lives. They diagnose

illnesses, and prescribe and administer treatment for people suffering from injury or disease. Physicians examine patients; obtain medical histories; and order, perform and interpret diagnostic tests. They counsel patients on diet, hygiene, and preventive health care. They may be part of a team that coordinates care for a population of patients.

In cases such as this, the duties of the position determine the outcome and not the job title. In cases such as this, the duties of the position determine the outcome and not the job title. On appeal, the petitioner explains that the beneficiary would be involved in the direct management of the treatment plans of patients and would be participating in the direction of medical care from the patients' admission through discharge. This would include the diagnosis of patient's condition, recommending the type of treatment to be given including therapy, wound management and the monitoring of blood sugar and blood pressure.

This position is more complex than that of a case manager. The duties, as expanded on appeal, are those of a physician. Therefore, this petition may not be approved because the petitioner has not established that the beneficiary has a license or other authorization required by the State of intended employment to practice medicine, or is exempt from this requirement by law. Additionally, the petitioner has not shown that the beneficiary has passed the Federation Licensing Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) [REDACTED]

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.