



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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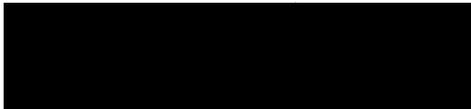
Date:

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:



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

The petitioner is a health care provider with nine employees and \$703,571 gross annual income. It seeks to employ the beneficiary as a director of nursing for a period of one year. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel argues that the proffered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and
3. Evidence that the alien qualifies to perform services in the specialty occupation.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary holds a bachelor of science degree in nursing from an institution in the Philippines and is licensed in the State of Mississippi. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position.

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.

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 duties of the proffered position are described in pertinent part as follows:

Conduct orientation seminars for healthcare personnel preparing to take licensing examinations. Implement training programs for healthcare personnel employed by GSI or a client of GSI. Assure efficient and productive communication between healthcare personnel and their facility employers. Develop and utilize resources and outside agencies to improve healthcare personnel leadership and education on the job. Develop testing materials. Survey facilities to determine their need for improve [sic] performance and/or communication with placed personnel. Maintain records of state licensing requirements for each state in the U.S. Screen applicant's resume's [sic] according to skill level and probability of successful placement. Serve as liaison between healthcare personnel and the facilities.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The petitioner has not shown that similar firms require the services of such individuals in parallel positions.

In an affidavit dated December 13, 1999, the petitioner's president states in part that:

In 1995, it was determined that GSI was in need of a Director of Nursing (DON) to create and direct a training program for staff nurses.

Although the petitioner's president argues that the petitioner's two former directors of nursing were required to hold baccalaureate degrees, the record does not establish that the proffered position is so complex to support such a requirement.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to be that of a head nurse or nurse supervisor. The Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 210-212 describes the duties of a head nurse or nurse supervisor in part as:

They plan work schedules and assign duties to nurses and aides, provide or arrange for training, and visit patients to observe nurses and to insure that care is proper. They may also insure records are maintained and equipment and supplies are ordered.

The Handbook finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a nursing supervisor. 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.

Although counsel argues that it is an industry standard to require a minimum of a baccalaureate degree for the position of Director of Nursing, and further argues that O*Net, the Occupational Information Network, supports such argument, the record does not establish that the beneficiary's proposed duties, in the petitioning entity with its total of nine employees, contain the complexity that are described for a nursing director in O*Net. The record does not indicate that the beneficiary will be performing such duties as "recruits, interviews, selects and assigns nursing and health services staff, faculty and students, conducts studies and site visits to assess program needs and evaluate the cost-effectiveness and efficiency of existing services, prepares, maintains, and updates nursing policy and procedures manuals," or "directs collection, analysis, and interpretation of health service and utilization statistics."

As the record does not demonstrate that the beneficiary's proffered position is an administrative position, or a graduate nursing program in research, consulting, teaching, or a clinical specialization, 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.