

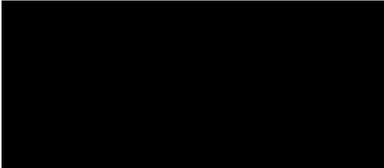


DA

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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ULLB, 3rd Floor
Washington, D.C. 20536



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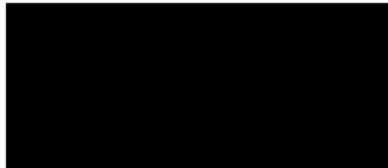
File: LIN 99 138 53355 Office: Nebraska Service Center Date:

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:



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, Acting Director
Administrative Appeals Office

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

The petitioner is a "rehabilitation campus" which seeks to employ the beneficiary as a nurse supervisor for a period of three years. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel submits a brief.

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 duties of the offered position do not qualify as the duties of a specialty occupation. On appeal, counsel argues that the duties of a registered nurse do not clearly encompass some of the duties of the offered position. Some of the duties performed in addition to those of a registered nurse are supervising, evaluating, regulating, monitoring and evaluating compliance with various federal and state regulations and to assist and work with management. Counsel states that clearly, duties that are cloaked by a mantle of a high level of responsibility that requires the ability to exercise independent authority and judgment are indisputable indicators of the demanding nature of the position. Counsel further states that a bachelor's level of education or comparable knowledge and skills is a realistic prerequisite for a nurse supervisor, but not for a general nurse whose responsibility is to carry out orders.

The petitioner describes the duties of the offered position as follows:

Assure that all nursing personnel comply with the facility personnel and nursing policies.

Admit, transfer, and discharge residents as appropriate and required.

Ability to monitor documentation and follow through documentation, i.e. MDS documentation, accident/incident reports, charting for Medicaid and Medicare, etc.

Ability to direct, evaluate and supervise all resident care and initiate corrective action as necessary.

Ability to make daily resident rounds, identify any resident needs, as well as facility needs and report them to the director of nursing and/or the administrator.

Ability to provide clinical supervision to the nursing staff, i.e. assignments, daily care planning, and to see that they are properly followed through.

Ability to instruct nursing staff in proper, preventative safety measures and use of adaptive equipment to meet the needs of each resident.

Ability to control the supplies and equipment within each nursing unit.

Ability to complete reports and assignments accurately and adhere to established time schedules.

Assure sufficient number and classification of staff on your shift, calling staff in to work as needed, and complete work assignments fairly to assure quality of care.

Make periodic rounds of the facility to assure that care is being administered as directed and needed, and to evaluate each resident's physical and emotional status.

Make rounds with physicians as necessary, and notify physicians of changes in resident condition.

Provide direct nursing care as necessary, including: TPR, BP, start IV's obtain sputum and other specimens.

Authorize the use of restraints as necessary in accordance to federal and state regulations and facility policy.

Monitor medication passes and treatments to assure that physician orders and timelines are being followed, and to assure appropriate and timely resident care.

Participate in the facility's survey and the development of corrective actions.

Assist the Quality Assurance committee in the development and implementation of action plans.

Maintain confidentiality and professionalism at all times.

Assure that the residents' rights to fair and equitable treatment, self-determination, individuality, privacy, property, and civil rights are followed by all nursing staff.

Ability to obtain physician's orders and any revisions for all treatments and medications needed.

Assure that all residents receive care in a manner and in an environment that maintains or enhances their quality of life without compromising the safety and rights of other residents.

Assure that each resident receives the appropriate nursing, medical, and psychosocial services to attain and maintain the highest possible mental and physical-functional status.

Follow infection control, universal precautions, and OSHA training and facility policies to assure a safe and sanitary environment.

In this case, the duties of the offered position are those of a registered nurse with supervisory responsibilities. The Department of Labor's Occupational Outlook Handbook, 2000-2001 edition at page 211-212 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a registered nurse. Some registered nurses hold baccalaureate degrees while others hold diplomas or associate (two-year) degrees. Additionally, the Handbook indicates that attempts to raise the educational requirements for a registered nursing license to a baccalaureate degree in nursing have not been successful. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the offered 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.

ORDER: The appeal is dismissed.