



U.S. Department of Justice

Immigration and Naturalization Service

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



File: SRC-98-155-51385 Office: Texas Service Center

Date:

20 NOV 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)

Public Copy

IN BEHALF OF PETITIONER:



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

The petitioner is a nursing care provider with 200 employees and a gross annual income of \$2 million. It seeks to employ the beneficiary as a registered 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, the petitioner's president 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 duties described by the petitioner did not appear so complex as to require a baccalaureate degree. The director further found that the petitioner had not established that it required a baccalaureate degree for the position or that similar health care facilities had such a requirement for the same position. On appeal, the petitioner's president states in part that the proffered position of registered nurse specializing in intensive care is a complex and highly skilled position.

The petitioner's statement on appeal is 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. The petitioner's description of the duties of the offered position can be summarized as follows:

- \* provide nursing care to patients in intensive care facilities;
- \* analyze complex patient situations, determine appropriate actions and evaluate the effectiveness of the

actions taken by herself and the rest of the medical staff;

\* identify, develop and implement, in accordance with each patient's plan of care, appropriate teaching plans to enable the patient and his or her family to maintain the care plan once the patient has left the medical facility;

\* liaise with other health care professionals to coordinate and direct patient care efforts;

\* evaluate and revise plan of care as needed;

\* evaluate the effectiveness of interventions by the nursing staff as it involves the patient care plan and therapies;

\* administer medications and treatments, check patient's physical condition and record findings in chart.

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 not met any of the above requirements to classify the offered position as a specialty occupation.

The Service does not agree with the petitioner's argument that the beneficiary's position as a registered nurse working in an intensive care unit is an occupation that would normally require a bachelor's degree in nursing or a related field. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition at pages 210-212 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. Furthermore, the Handbook at page 211 specifically notes some registered nurses working in hospitals may rotate among the departments of the facility including surgery, maternity, pediatrics, emergency rooms, intensive care, or treatment of cancer patients, with no indication that a baccalaureate or higher degree in a specialized area is required. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

The petitioner's claim that it normally requires a nurse to attain at least a bachelor's of science in nursing degree or the equivalent for employment cannot be accepted. The record contains eighty-three employee surveys and resumes listing the educational qualifications of a sample of the petitioner's employees. These documents show that sample includes twenty-seven individuals with a bachelor's of science in nursing, twenty-eight individuals with two year associate degrees, and twenty-eight individuals with foreign degrees and diplomas. It must be noted that it is not possible to determine whether the individuals with foreign degrees and diplomas possess the equivalent of a baccalaureate or higher degree, as the petitioner has failed to provide independent evaluations of the foreign academic credentials. As such, the evidence in the record tends to establish that approximately half of the petitioner's employees hold two-year associate degrees, with the remainder possessing a baccalaureate or higher degree. Therefore, it cannot be concluded the petitioner has established that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position.

The petitioner's president claims that the specific hospital where the beneficiary has been contracted to work requires an individual with a two-year associate degree and at least two years of experience, so as to be the equivalent of a baccalaureate degree. However, the petitioner has failed to provide any evidence, such as an employment contract, to corroborate this claim. Furthermore, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As previously noted, the Handbook does not provide any indication that

a baccalaureate degree or higher is required for a registered nurse to be employed in any of the various departments of a hospital.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the 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.