



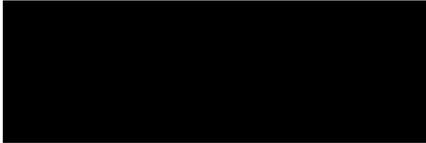
MZ

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

Date: **OCT 18 2001**



File: SRC-99-123-52263 Office: Texas Service Center

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:



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

The petitioner is a health care facility with 990 employees and a gross annual income of \$112,409,815. It seeks to employ the beneficiary as a telemetry 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.

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 to be so specialized and complex as to require a baccalaureate or higher degree. The director further found that the evidence in the record indicated that the petitioner hired nurses for the telemetry unit who did not possess such degrees. On appeal, counsel states in part that the duties of a telemetry nurse are separate and apart from those of a general duty registered nurse. He also states that the Department of Labor's (DOL) Dictionary of Occupation Titles (DOT) recognizes various skill levels within the nursing profession. He further states that the duties of the proffered position are so specialized and complex that the minimum of a bachelor's degree is required. He additionally states that as 25 of the total 39 nurses in the petitioner's telemetry unit hold bachelor's degrees in nursing, the petitioner has demonstrated that it is its normal practice to hire nurses with such degrees.

Counsel'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. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Assessing and prioritizing patient care needs according to acuity;
2. Delegating patient care responsibilities to assigned team members based upon patient needs and competencies;
3. Administering medications and therapies in accordance with physician's orders;
4. Assessing each newly admitted patient;
5. Identifying patient's problems utilizing nursing diagnosis and initiating plan of care according to identified patient needs;
6. Communicating ongoing patient care needs with team members as identified through patient assessment;
7. Solicit feedback from team members as to patient status;
8. Check patient medical records for changes in physician's orders and report any pertinent changes in patient's condition to physicians;
9. Perform physical assessment with an advanced expertise with an ability to assess a range of conditions identified by physical, monitor and/or equipment readings;
10. Assist physicians with radiological, intubation, catheterization, thoracentesis, paracentesis, cardioversion, bronchoscopy and suturing procedures.

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.

First, the Service does not agree with counsel's argument that the proffered position of telemetry nurse would normally require a bachelor's degree in nursing or a related field. Counsel asserts that the DOL makes a clear differentiation through SVP classification between 26 nursing positions listed in the DOT. However, a reference in the DOL's DOT, Fourth Edition, 1977, standing alone, is not enough to establish an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the Department of Labor in the various editions of the Occupational Outlook Handbook (Handbook). The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears similar to that of a registered nurse. In its Handbook, 2000-2001 edition, at pages 210-211, the DOL describes the job of a registered nurse as follows:

When providing direct patient care, they observe, assess, and record symptoms, reactions, and progress; assist physicians during treatments and examinations; administer medications; and assist in convalescence and rehabilitation.

Hospital nurses form the largest group of nurses. Most are staff nurses, who provide bedside nursing care and carry out medical regimens. They may also supervise licensed practical nurses and aides. Hospital nurses usually are assigned to one area such as surgery, maternity, pediatrics, emergency room, intensive care, or

treatment of cancer patients. Some may rotate among departments.

The DOL's 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. 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.

Finally, counsel cites a Service adjudications memorandum, HQ214h-C (November 17, 1995), and argues that the Service specifically recognized that professional registered nurses may be classified in H-1B status. Such memo states in part as follows:

Situations may arise, however, where a petitioner may be able to establish that it, in the past, has hired as registered nurses only those possessing a bachelor's degree or higher. (Emphasis added). In these situations it may be possible for the petitioner to argue that its nursing positions require a registered nurse with a baccalaureate degree. This decision must be made on a case-by-case basis after examining the petitioner's past hiring practices and the hiring practices of similar hospitals.

In the present case, the petitioner's past hiring practices do not persuasively establish that it normally requires a baccalaureate or higher degree in a specialized area for employment as telemetry nurse. It appears that such degree may be a preference rather than a normal requirement. Nor has the petitioner established that the duties of the proffered position are so complex that they can be performed only by an individual with a 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.