



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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File: WAC-00-113-50777

Office: California Service Center

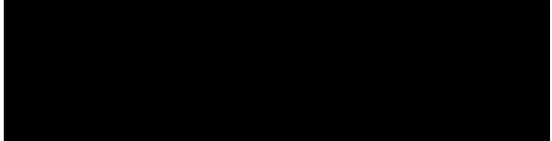
Date: 11 APR 2002

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:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, 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 The director's decision will be withdrawn and the matter remanded to him for further action and consideration.

The petitioner is a placement agency providing staffing services within the health care industry. It has 100 employees and a gross annual income of \$2 million. It seeks to employ the beneficiary as a quality management coordinator 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 petitioner had not shown that a baccalaureate or higher degree in a specialized area is normally required for the proffered position. On appeal, counsel argues that the proffered position is a specialty occupation because a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position. Counsel contends that this degree requirement is common to the industry in parallel positions among similar organizations. Counsel asserts that the petitioner has shown that the proposed duties are so complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree.

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 a letter which accompanied the initial I-129 petition, the petitioner described the duties of the beneficiary in the offered position as follows:

...will interpret and implement quality management standards of our clients (which includes, hospitals and other health care organizations) to ensure quality of services by our supplemental personnel (Registered Nurses, Licensed Vocational Nurses, and other health care professionals) to our clients. Her responsibilities will include reviewing the quality assurance standards, study each of our client's policies and procedures, and review with a hospital (i.e., other health care organizations) personnel and/or patients to evaluate effectiveness of a quality assurance program. She will select specific topics for review, such as problem procedures, high volume cases, high risk cases, or other factors, and then will compile statistical data, and write narrative reports summarizing quality assurance findings to be submitted to [REDACTED] management and each clients' Personnel Department. She will also formulate effective way of addressing complaints, suggestions, and concerns from both the client and/or its patients. She will analyze clients' specifications, worker requirements, past and present policies and procedures in order to properly write and implement an effective quality assurance program. Using extensive medical background and training, the employee will analyze patient records, treatment plans, prescriptions, physicians diagnosis/report, performance files, while applying utilization review criteria, to determine and evaluate performance of each health care staff sent to the client.

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 proffered position appears to be that of a health services manager. A review of the Department of Labor's Handbook, 2002-2003 edition, finds that a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. Additionally, the Handbook specifically notes that health services managers require training or experience in both health and management. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

Nevertheless, the petition may not be approved at this time. The director has not determined whether the beneficiary qualifies to perform services in a specialty occupation. Accordingly, the matter will be remanded to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.