



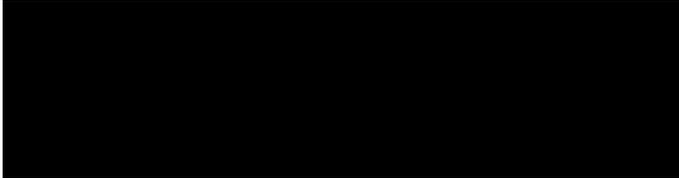
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U.S. Department of Justice

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: WAC-01-048-51898

Office: Vermont 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 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, 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 facility with 178 employees and a gross annual income in excess of \$7.1 million. It seeks to employ the beneficiary as an assistant director of nursing 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 concluded that the petitioner had failed to establish that a baccalaureate or higher degree is a standard minimum requirement for the job offered. On appeal, counsel argues that the proffered position is an administrative position, and as such requires a bachelor of science degree in nursing.

Counsel's statements on appeal are 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 a letter which accompanied the initial I-129 petition, the petitioner described the duties of the beneficiary in the proffered position as follows:

...will support the Director of Nursing to administer nursing program in our convalescent hospital for five(5) Supervisory Nurses, fifteen(15) Staff Nurses, four(4) Licensed Vocational Nurses, eight(8) Registered Nursing Assistants, and sixty-eight(68) Nursing Assistants. Under supervision of the Director, [the beneficiary] will maintain standards of patient care and advise medical staff and administrators in matters related to nursing service. She will recommend the establishment and

implementation of new policies, or revisions to existing policies.

[The beneficiary] will assist in the development of organizational structure and standards of performance. She will interpret policies and objectives of nursing service to staff and community groups. She will develop standards and procedures for providing nursing care and for evaluating service. She will promote, maintain and further working relationships with community agencies and with other establishment departments. [The beneficiary] will assist in preparation of departmental budget. She will help to establish personnel qualification requirements, draft procedure manuals, initiate in-service programs, install record and reporting system, and perform other personnel management tasks. She will initiate studies to evaluate effectiveness of nursing services in relation to their objectives and costs. [The beneficiary] will consult with the Director of Nursing on problems and interpretation of medical policies to ensure patient needs are met. She will recommend duty assignment of supervisory nursing personnel. She will plan and organize orientation and in-service training for staff members, and participate in ongoing educational programs for staff to keep current with medical technology and treatment. [The beneficiary] will assume[sic] authority and responsibilities in the absence of the Director of Nursing.

The Service finds no support for counsel's argument that the proffered position is an administrative nurse position, and as such requires a bachelor of science degree in nursing. Rather, the proffered position appears to be that of a health services manager. A review of the Department of Labor's (DOL) 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.

This petition may not be approved, however, as the record does not contain a certified labor condition application from the DOL. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the DOL that it has filed a labor condition application.

We note our authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within our power to formulate. Helvering v. Gowran, 302 U.S. 238 (1937); Securities Com'n v. Chenery Corp., 318 U.S. 86 (1943); and Chae-Sik Lee v. Kennedy, 294 F. 2d (D.C. Cir. 1961), cert. denied, 368 U.S. 926.

Beyond the decision of the director, the record contains insufficient evidence to demonstrate that the beneficiary qualifies to perform services in the specialty occupation. Although the record indicates that the beneficiary holds the equivalent of a bachelor's of science degree in nursing, the beneficiary does not possess a master's degree in any of the specialized areas of study listed above as a standard credential for employment as a health services manager. In addition, the record contains no evidence that the beneficiary has any education, training, or experience as a manager within the health industry. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.