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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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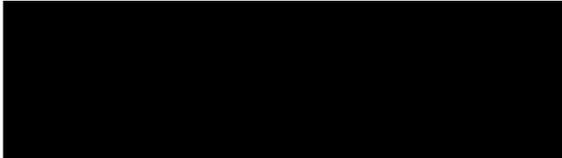
File: WAC-01-067-50527 Office: California Service Center

Date: DEC 10 2002

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:



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, California Service Center, and is now before the Associate Commissioner, Examinations, on appeal. The appeal will be dismissed.

The petitioner is a residential care facility for the elderly with one employee and a stated gross annual income of \$250,000. It seeks to employ the beneficiary as a coordinator of rehabilitation services for a period of three years. The director determined that the proffered position is that of a nursing home administrator, an occupation that requires licensure in all 50 States and the District of Columbia. The director denied the petition because the petitioner failed to submit evidence to show that the beneficiary had passed a licensing examination, completed a State-approved training program, and was pursuing continuing education as required by the State of California.

On appeal, counsel asserts that the proffered position is not that of nursing home administrator, but rather that of coordinator of rehabilitation services, an occupation that does not require licensure in the State of California. In support of his assertion; counsel cites the information provided regarding nursing home administrator positions and coordinator of rehabilitation services positions in the Department of Labor's (DOL) Dictionary of Occupational Titles (DOT).

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record shows that the beneficiary holds a Bachelor of Science degree in Nursing from Central Philippines University. The beneficiary was awarded a license as a registered nurse by the Republic of the Philippines on September 19, 1994. The credentials evaluator found the beneficiary's foreign education equivalent to a Bachelor of Science degree in Nursing awarded by regionally accredited institutions of higher education in the United States. The evaluation appears reasonable and will be accepted.

The question to be determined in this proceeding is whether the beneficiary is required to be licensed in the State of California in order to perform the duties of the position in question.

The proffered position most closely parallels that of a nursing home administrator. The DOL groups nursing home administrator positions under the general heading "medical and health services managers" in its Occupational Outlook Handbook (Handbook), 2002-2003 edition. The Handbook describes the duties of a health services manager/nursing home administrator at page 74 as follows:

The term "medical and health services manager" encompasses all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system.

* * *

Clinical managers have more specific responsibilities than generalists, and have training or experience in a specific clinical area. For example, directors of physical therapy are experienced physical therapists. . . These managers establish and implement policies,

objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

According to the Handbook at pages 75-76, 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. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities and at the departmental level within health care organizations. For clinical department heads, a degree in the appropriate field and work experience may be sufficient for entry. The Handbook indicates that all 50 States and the District of Columbia require nursing home administrators to have a bachelor's degree, pass a licensing examination, complete a State-approved program, and pursue continuing education.

In this case, the record contains no evidence to show that the beneficiary has passed a licensing examination, completed a State-approved program, or is pursuing continuing education in the State of California.

Counsel's argument that the Service improperly classified the position as that of a health services manager/nursing home administrator rather than that of coordinator of rehabilitation services is not persuasive. Counsel cites the DOL's descriptions of the educational requirements for nursing home administrator positions and coordinator of rehabilitation services positions in the DOT, Fourth Edition, 1977. However, a review of the most current version of the DOT, O*NET OnLine, reveals that the position of coordinator of rehabilitation services is now grouped under the general heading "medical and health services manager" just as it is in the Handbook. The Handbook is given much more weight than the DOT or O*NET in determining the educational and licensing requirements for a particular occupation. This is because the Handbook provides specific and detailed information regarding the educational and other requirements for occupations.

In view of the foregoing, it is concluded that the petitioner has not established that the beneficiary qualifies to perform services in a specialty occupation since she is not licensed as a nursing home administrator in the State of California.

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.