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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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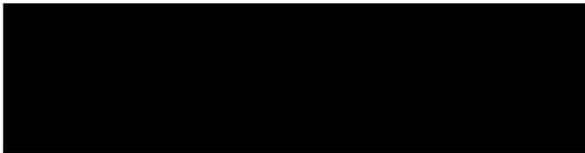
16 DEC 2002

File: WAC-01-136-50705 Office: California Service Center Date:

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 identity information invasion of personal privacy

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 appeal will be dismissed.

The petitioner is a healthcare service provider with 576 employees and a stated gross annual income of \$237 million. It seeks to employ the beneficiary as a health service administrator for a period of three years. The director determined that the petitioner had not established that the proffered position is a specialty occupation and that the beneficiary was qualified to perform services in a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

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. The director also determined that the record did not contain sufficient evidence to demonstrate that the beneficiary's education, training, and experience qualified her to perform services in the specialty occupation. On appeal, counsel argues that the proffered position is that of a health services manager rather than that of a general manager as determined by the director. Counsel asserts that the beneficiary is qualified to perform services in the proffered position by virtue of her foreign baccalaureate degree in nursing and 22 years of work experience.

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:

Her duties will be the interpretation, analysis and implementation of quality standards for each of our

clients pursuant to our company's operation manuals and existing contracts. She will schedule or monitor each nurse and healthcare provider to make sure each personnel [sic] has the requisite training, instruction or continuing education to fully comply with each client's quality standards.

She will implement an effective communication/information system between the client, nurses and our personnel department to monitor, avoid and eventually eliminate tardiness, absenteeism and truancy among our staff, which to date are predominant complaints from our clients.

She will oversee that each of our employees comply with the requirements of the Board of Registered Nurses and that their qualifications\experience match the requirements of their assigned position. She will monitor each employee's license to practice nursing is up to date and that the continuing education requirements are met. She will schedule and organize monthly training for the registered nurses, licensed vocational nurses and certified nursing assistants to update them with the latest medical in [sic] breakthroughs, equipment and procedures. She will assist the undersigned in formulating solutions to complaints and suggestions of clients. She will review the nurse's and staff's performance record before negotiating or renewing his/her contract.

The proffered position appears to be that of a health services manager. A review of the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 74-77, 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 the regulations and has overcome this particular basis of the director's denial.

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 graduated from Filamer Christian Institute in Roxas, Philippines, holding a bachelor of science degree in nursing. The record also contains a copy of the beneficiary's Official Transcript of Records listing her coursework at this institution. A credentials evaluation service found that the beneficiary's foreign degree is the equivalent of bachelor of science degree in nursing from an accredited institution of higher learning in the United States. The evaluator's conclusions regarding the beneficiary's formal education and degree equivalent appear reasonable and will be accepted.

As previously discussed, the Handbook finds that the usual requirement for employment in the proffered position is a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration. The petitioner must establish that the beneficiary holds a minimum of a master's degree or its equivalent in one of the specific specialties cited above. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in the specialty occupation based upon education alone.

The Service is not persuaded by the argument that the beneficiary is qualified to fill the proffered position because of her education, training, and twenty-two years of work experience in nursing-related positions. While the record contains certificates reflecting that the beneficiary has undergone additional training in nursing at King Fahad Hospital in Riyadh, Saudi Arabia and with the Department of Health in the Philippines, the petitioner has failed to submit an evaluation regarding the degree equivalent the beneficiary had achieved in undergoing this training.

Counsel has submitted five separate letters relating to the beneficiary's employment as a nurse for five years at King Fahad Hospital and an additional two and one-half years at Iloilo Doctors' Hospital in Iloilo City, the Philippines. However, the petitioner has not shown that this employment experience was experience in a specialty occupation or that it is sufficient to overcome the beneficiary's lack of a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration. Furthermore, the record contains no evidence that the beneficiary has any education, training, or experience as a manager within the health industry. Moreover, it must be noted that the record does not contain an evaluation of employment experience from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a master's degree in a specific specialty. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes her to practice a specialty occupation. In view of the foregoing, the petitioner has not persuasively established that the beneficiary qualifies to perform services in the offered position of health service administrator.

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.