



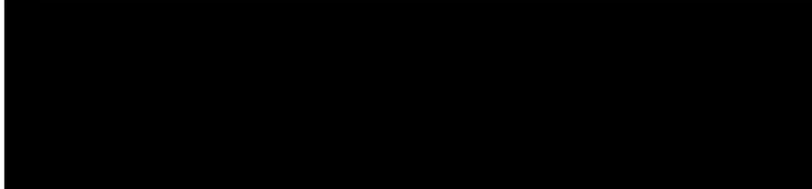
U.S. Department of Justice

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: EAC-01-017-50790

Office: Vermont Service Center

Date: 04 FEB 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: SELF-REPRESENTED

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, 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 rehabilitation and skilled care facility with 420 employees and a gross annual income of \$14.7 million. It seeks to employ the beneficiary as a clinical nurse specialist/supervisor for a period of one year. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner's president and CEO submits additional information.

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 demonstrated that the duties of the proffered position are so complex as to require a baccalaureate degree or that a baccalaureate degree is normally the minimum requirement for the proffered position. On appeal, the petitioner's president and CEO states, in part, that the proposed duties are so complex as to require a baccalaureate degree. He further states that because of credibility and leadership issues, its supervising nurses must possess such degree.

The petitioner'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. Supervises activities of Specialty Registered Nurses and Nurse clinicians under his/her jurisdiction in carrying out assigned tasks.

2. Responsible for a comprehensive and accurate assessment of patients'/residents' medical condition upon admission into the facility. Similar assessments are also required on a quarterly basis or when there are significant health and physical changes observed. Conducts in-house seminars on assessment techniques.
3. Responsible for the implementation of quality assurance activities to insure conformance with current standards of practice and requirements of governmental regulatory agencies for participation in Medicaid and Medicare programs. Completes and endorses to the Director of Nursing, Medicaid level of care and Medicare documentation for patients/residents..
4. Reviews and evaluates work performance of individual nursing staff members under his/her supervision, and makes recommendations for wage increases and promotion. Counsels staff from time to time.
5. Assists the director in the coordination of nursing activities with activities of other departments.
6. Provides director with confidential information regarding condition of and events concerning residents.
7. Functions as a leader in Interdisciplinary Health Care planning.
8. Prepare specialized documentation to detail medical necessity and nursing care needs of residents when drastic medical conditions occur.
9. Cooperates with regulatory agency survey personnel and collaborates with professional consultants in order to maintain and promote improvement in quality of resident care.
10. Evaluate risk factors that can impact health and diseases of body systems by synthesizing biophysiological, psychosociological factors to include application of knowledge associated with patient's medical and nursing needs.
11. Develop standards of care, education materials, protocols and policy/procedures. Evaluate staff practice patterns, provide expert in-house consultations to staff, and to resolve complex patient management problems.
12. Diagnose and treat acute health problems such as infections and injuries. Diagnose, treat and monitor

chronic diseases such as diabetes and high blood pressure. Use pharmacologic, non-pharmacologic and pathophysiological therapies for the management of conditions as diagnosed.

13. Evaluate the quality of care given to patients within an interdisciplinary team environment. Formulate changes in policy that promote positive clinical outcomes as a result of assessment, reassessment implementation, and evaluation of current standards of care and practice.

14. Maintain a system in following-up client status by determining care policy used and by documenting and assessing outcomes as well as re-assessing and modifying care policy and plans as necessary to achieve set goals or solve perceived problems.

15. Formulate research techniques and statistical projections using Gant charts, matrices, statistical inferences and models to analyze and determine effectiveness of nursing care delivery and outcomes. Submit finding to management for use in policy formation.

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 the petitioner's argument that the proffered position of clinical nurse specialist/supervisor would normally require a bachelor's degree in nursing or a related field. The proffered position appears to be that of a nursing

supervisor. A review of the Department of Labor's Occupational Outlook Handbook (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 nursing supervisor. 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.

As the record does not demonstrate that the beneficiary's proffered position is an administrative position, or a graduate nursing program in research, consulting, teaching, or a clinical specialization, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as nursing, for the offered position. Third, although the record contains various internet job postings, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the 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.

ORDER: The appeal is dismissed.