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U.S. Department of Justice

Immigration and Naturalization Service

event clearly unwarranted
invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
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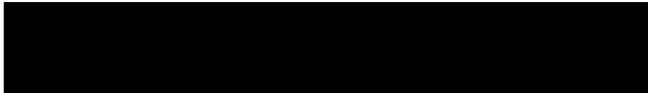


File: WAC-01-025-52919

Office: California Service Center

Date: 14 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)

PUBLIC COPY

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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 home health care agency with five employees and a gross annual income of \$400,000. It seeks to employ the beneficiary as a registered nurse for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a statement.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) 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 proffered position as a registered nurse does not require a Bachelor of Science degree in Nursing (BSN). On appeal, the petitioner argues that the specific duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a BSN degree.

The petitioner's argument 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 proffered 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 proffered position in pertinent part as follows:

1. Perform therapeutic measures prescribed and dictated by the medical authorities;
2. Charting of patients condition, medications, and orders given by the doctors;
3. Assists the patient towards earlier rehabilitation.

4. Teaches and directs non professional nursing personnel in the execution of their tasks.
5. Assesses the nursing needs of the patients, draws and provides the nursing care plan including recognizing, interpreting and reporting symptoms and observations, carrying out doctors instructions intelligently, accurately and prompts providing continuity in patients care through systematic up keep of records and reports, guiding non professional nursing personnel to help achieve a safe and healthy atmosphere . . .

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 failed to establish that any of the four factors enumerated above are present in this proceeding.

First, the Service does not agree with the petitioner's argument that a BSN degree is a minimum requirement for entry into the field of home health nursing. In these proceedings, the duties of the position are dispositive and not the job title. The proffered position is that of a registered nurse working in the field of home health nursing. According to the Department of Labor's Occupational Outlook Handbook (Handbook) 2000-2001 edition, home health nurses provide periodic services, prescribed by a physician, to patients at home. After assessing patients' home environments, they care for and instruct patients and their families. The Handbook at pages 210-212 does not indicate that there is a requirement of a baccalaureate or higher degree in a specialized

as a registered nurse. 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.

Second, the petitioner has not shown that the degree requirement is common to the industry in parallel positions among similar organizations.

Third, while the petitioner asserts that a BSN degree is a minimum requirement for the position in question, no evidence has been submitted to corroborate that assertion.

Finally, the Service does not agree with the petitioner's argument 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, on appeal, provided the following amended description of the duties of the proffered position:

- * Undertaking responsible nursing care of medical, communicable, mental health, surgical, emergency, gynecologic, obstetric, and geriatric patients involving the whole management of care requiring the application of principles based upon the biological, physical and social sciences.
- * Promotion of health both physical and emotional by teaching the patient and the family emphasizing the conservation of human lives. As well as teaching preventive health care letting them identify signs and symptoms to be observed in relation to a disease process.
- * Revises and implements the nursing care to the changing needs of the patient.

- * Accurate reporting and recording of facts including evaluation of the whole case.
- * Observation of symptoms of physical and mental conditions and needs requiring evaluation and application of principles based upon the biological, physical and behavioral sciences.
- * Communicate the rationale of nursing interventions to the patient, family and other members of the health team...
- * Makes nursing history, assessment that identified common variables affecting nursing care.
- * Plans, write down implement systematized nursing care utilizing assessment data involving family and other members of health team.

This revised description of the duties of the proffered position, while quite extensive, nevertheless parallels the duties of registered nurses working in the field of home health care as described in the Handbook. As such, it has not been persuasively established that the duties of the proffered position are so complex that they can be performed only by a nurse with a BSN degree. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the proffered 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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.