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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 01 068 52822

Office: CALIFORNIA SERVICE CENTER

Date: 15 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:



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

The petitioner is an adult residential facility with 4 employees and a gross annual income of \$190,000. It seeks to employ the beneficiary as a coordinator of rehabilitation services for a period of three years. The director denied the petition finding that the petitioner had failed to establish that the position qualified as a specialty occupation.

On appeal, counsel for the petitioner submits a brief.

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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) provides that a petitioner can qualify the offered position as a specialty occupation if the petitioner can establish that:

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 petition is supported by a description of the duties of the

position that indicates that the beneficiary will be responsible for the following activities: plans, administers, coordinates and directs operation of health rehabilitation programs, including physical, occupational, recreational and speech therapies; consults with medical and professional staff in planning and coordinating joint patient and management objectives; conducts training programs to maintain staff proficiency in therapy techniques and use of new methods and equipment to meet patient needs; and, finally, recommends patient fees for therapy based on use of equipment and staff involvement.

The director determined that the position was that of a registered nurse and denied the petition finding that the proffered position did not qualify as a specialty occupation.

On appeal, counsel for the petitioner argues that according to the Department of Labor's Occupational Outlook Handbook and Dictionary of Occupational Titles, the position qualifies as a specialty occupation. Counsel also asserts that the degree requirement is common to the industry and the duties of the position are of great complexity and responsibility and clearly specialized and associated with the attainment of a bachelor's degree. Finally, counsel asserts the beneficiary is qualified to perform the duties of the position.

The record is supported by a statement from the petitioner that the position can be filled by an individual with a degree in nursing, physical therapy, occupational therapy, physical education, speech therapy, or recreational therapy. The record also reflects that the beneficiary has a bachelor's degree in physical therapy.

Counsel's argument on appeal is not persuasive. The record does not establish that the proffered position qualifies as a specialty occupation. Counsel has failed to establish that any of the four factors enumerated above are present in this proceeding.

The record does not contain sufficient evidence establishing that a bachelor's or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the particular position. According to the petitioner, the proffered position can be filled by an individual with a bachelor's degree in any number of health related fields. Therefore, it has not been shown that the position requires an individual with a bachelor's degree in a specific academic specialty. Further, the record does not contain any evidence from an objective entity such as a professional organization, licensing board, or association describing the minimum degree requirements for this position.

Further, 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 for the proffered position or that

firms of similar size and scope require such individuals in parallel positions. The record reflects that the petitioner was established in 1995. In addition, the petitioner has not submitted any evidence relating to the hiring practices of firms of similar size and scope. Finally, the record does not contain evidence establishing that the duties of the proffered position are so complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree.

Counsel also asserts that the Department of Labor has determined that the position is a specialty occupation. However, a reference in the Department of Labor's (DOL) Dictionary of Occupational Titles (DOT), standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law.

In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions

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.