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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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File: SRC 01 012 51147

Office: TEXAS SERVICE CENTER

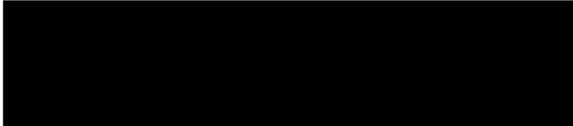
Date: 15 FEB 2002

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

The petitioner is a nursing facility with a staff of 140 employees and a gross annual income of \$7,200,000. It seeks to extend the employment of the beneficiary as a rehabilitation registered nurse for an additional three years. The director determined the petitioner had not established the position is a specialty occupation.

On appeal, counsel for the petitioner submits a brief.

The regulation at 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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) that a petitioner could qualify the offered position as a specialty occupation if the petitioner could 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 an extensive list of the duties of

the position. The petitioner has summarized these duties as follows: provide nursing care in rehabilitation units; perform physical examinations and monitor patients on a daily basis; evaluate, access and plan care of patients; consult with attending physicians and other members of the health care team on matters relevant to patient's care.

On appeal, counsel for the petitioner asserts that the position is a specialty occupation because the facility normally requires a degree or its equivalent for the position. Counsel further asserts that the beneficiary will be employed in skilled care and rehabilitative units that are advance practice specialties. Counsel further asserts that the beneficiary holds a supervisory position and supervises a treatment nurse, a hall nurse, and a nursing aide. Counsel further argues that the degree requirement is common to the industry and that the Department of Veteran's Affairs requires a bachelor's degree for its professional nurses. The appeal is accompanied by a list of nurses employed by the petitioner, additional job descriptions of nurses employed by the petitioner, job advertisements for nursing positions at other institutions, articles relating to nursing occupations, and, finally, statements describing the educational requirements for the position.

The petitioner's argument on appeal is not persuasive. The petitioner has not established that the position meets any of the four criteria enumerated above to qualify a position as a specialty occupation.

The Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2000-2001 edition, provides that there is no requirement of a Baccalaureate or higher degree in a specialized area for employment as a registered nurse in the United States. The Handbook notes that there have been attempts to raise the educational requirements for a registered nurse to a bachelor's degree but that these changes, should they occur, would probably be made state by state. The Handbook notes that 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.

Based on the above, it is clear that a bachelor's degree in nursing is not a minimum requirement for entry into the proffered position. As indicated in the Handbook, attempts have been made to raise the educational requirements for the position to a bachelor's degree and, if they should occur, would be made state by state. The record does not contain any evidence from the licensing board in the state of the beneficiary's intended employment establishing that a bachelor's degree is a minimum requirement for entry into this position. While the petitioner may prefer to hire nurses with bachelor's degrees, it is not a requirement for the position.

Further, the petitioner has not submitted sufficient evidence establishing that the petitioner has employed nurses with baccalaureate degrees for this position in the past or that facilities of similar size and scope employ such individuals in parallel positions. While the record contains a list of some of the nurses employed by the petitioner, the record does not contain copies of their academic degrees or their specific job duties. In addition, the fact that the Veteran's Administration employs nurses with bachelor's degrees does not establish that the position is a specialty occupation. It has not been demonstrated that the duties of a nurse employed by the Veteran's Administration are similar to the duties of the proffered position.

Lastly, the record does not establish that the duties of the proffered position are more complex than those of an ordinary registered nurse. The record contains a number of descriptions of the duties of the proffered position. The duties of the position appear to have gained complexity as the petition has worked its way through the adjudication process. However, the duties as initially described by the petitioner are those of an ordinary registered nurse. Therefore, the Service is not persuaded to classify the position of registered nurse as a specialty occupation. As a result, the director's decision is affirmed.

In closing it is noted that the Service previously classified this position as a specialty occupation. However, the Service is not bound by prior decisions that were made in error.

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.