



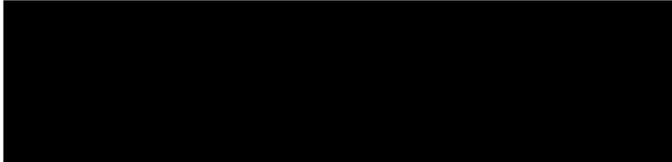
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U.S. Department of Justice

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: EAC-00-262-51751

Office: Vermont Service Center

Date: JAN 14 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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a skilled nursing and rehabilitation facility with over 250 employees and an approximate gross annual income of \$23 million. It seeks to employ the beneficiary as a staff nurse (infection control coordinator) for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

Pursuant to 8 C.F.R. 214.2(h)(4)(ii), a "specialty occupation" is defined 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 degree in a specialized area is a standard minimum requirement for the job offered or that the degree requirement is common to the industry in parallel positions among similar organizations. On appeal, counsel argues that the proffered position is an administrative position and as such requires a Bachelor of Science degree in Nursing (BSN).

The Service does not agree with counsel's argument that the proffered position requires a BSN degree. 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 offered position as follows:

Create and implement exposure control plan for the facility in accordance with current federal, state and local standards governing skilled and long-term care facilities. Develop written policies and procedures for the prevention and control of infection and exposures among residents and employees, as well as policies and

procedures for techniques and systems for identifying infections. Develop an employee health program as well as infection control orientation and in-service training program.

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.

The Service does not agree with counsel's argument that the proffered position of staff nurse (infection control coordinator) would normally require a bachelor's degree in nursing or a related field. The Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 Edition, at pages 210-212 does not indicate that there is a requirement of a baccalaureate or higher degree in a specialized area for employment as a registered nurse. Some registered nurses hold baccalaureate degrees while others hold diplomas or associate (two-year) degrees. Additionally, the Handbook indicates that attempts to raise the educational requirements for a registered nursing license to a baccalaureate degree in nursing have not been successful. It is noted that the Handbook does not support the petitioner's assertion that the offered position is a specialty occupation based on the beneficiary's supervision of other nurses and performance of administrative duties. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Counsel states that Regent Care Center is part of an umbrella organization managed by Tandem Management Corporation, along with

four other nursing care facilities in New Jersey. Counsel asserts that all of the facilities managed by Tandem Management employ infection control coordinators who hold a BSN degree as a matter of policy. However, neither counsel nor the petitioner has submitted any independent evidence to corroborate this assertion.

Counsel asserts that the requirement for a BSN degree is common in the nursing home industry for similar positions and submits a list of 28 nursing care facilities in New Jersey which purportedly require a BSN degree for positions as subacute unit managers, supervisors, and infection control coordinators. However, no evidence has been submitted from any of the facilities named on the list to corroborate this assertion. Thus, counsel has not submitted sufficient evidence to show that the degree requirement is common to the industry in parallel positions among similar organizations.

Finally, the petitioner has failed to establish that 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. 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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.