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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

[Redacted]

File: SRC-01-074-51764 Office: Texas Service Center

Date: JUL 18 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

[Redacted]

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 that 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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a private individual who seeks to employ the beneficiary as a medical coordinator for a period of three years. The director denied the petition because the petitioner had not established that the offered position is a specialty occupation. The director also denied the application because the petitioner had not submitted a Form ETA 9035 Labor Condition Application (LCA) that was certified by the Department of Labor (DOL) prior to the filing date of the petition as required by the regulations. See 8 C.F.R. 214.2(h)(4)(i)(B)(1).

On appeal, counsel submits a brief and additional documentation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,

2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and
3. Evidence that the alien qualifies to perform services in the specialty occupation.

In this case, the petitioner's LCA was certified by the DOL on August 6, 2001, a date subsequent to March 30, 2001, the filing date of the petition. Counsel states on appeal that the petitioner's failure to file a certified LCA with the I-129 petition was not the fault of the petitioner, but rather was due to processing delays at the DOL. However, the regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. Since this has not occurred, the petition may not be approved.

The director also denied the petition because the petitioner had failed to establish that the offered position is a specialty occupation. On appeal, counsel argues that the offered position is actually that of a health services manager.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Ms. Semilla, using her medical knowledge and expertise[,] will consult with medical specialists and other personnel in the development and maintenance of the medical needs of the petitioner.

The Service does not agree with counsel's argument that the offered position is that of a health services manager, an occupation that would normally require a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration.

In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, the Department of Labor (DOL) describes the job of a health services manager as follows:

The structure and financing of healthcare is changing rapidly. Future medical and health services managers must be prepared to deal with evolving integrated healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work, and an increased focus on preventive care. . . . Increasingly, medical and health services managers will work in organizations in which

they must optimize efficiency of a variety of interrelated services, for example, those ranging from inpatient care to outpatient follow-up care.

In smaller facilities, top administrators handle more of the details of daily operations. For example, many nursing home administrators manage personnel, finance, facility operations, and admissions, and have a larger role in resident care.

The proposed duties of the offered position are not those of a health service manager, as described above. For example, the offered position involves working in a private home and does not involve any complex administrative duties such as managing finance and facility operations in a medical care facility.

The DOL's Handbook provides insight into the types of institutions in which health services managers are normally found. In the year 2000, almost 2 out of 3 jobs were in hospitals. About 1 in 5 were in nursing and personal care facilities or offices and clinics of physicians. The remainder worked mostly in home health agencies, ambulatory facilities run by state and local governments, offices of dentists and other health practitioners, medical and dental laboratories, residential care facilities, and other social service agencies.

In this case, the petitioner is a private individual who wishes to employ the beneficiary to supervise home health care for his father, an elderly man who suffers from serious medical conditions and is unable to care for himself. The DOL's list of employers that typically require the services of a full-time individual who performs only health services management duties does not include private individuals who employ a home health care coordinator.

Additionally, the DOL states in the Handbook at page 75 that a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in the field of health services management. A review of the Handbook further finds that health services managers require training or experience in both health and management. [Emphasis added.]

In this case, the petitioner states that the offered position requires a bachelor of science degree in nursing (BSN) with no stated requirement of master's-level studies in health services management or previous experience in the occupation. The record shows that the beneficiary has a BSN degree and previous work experience as a registered nurse. She has neither graduate-level education in health services management nor previous work experience as a health services manager. For these reasons, the

Service is not persuaded to label the offered position as that of a health services manager.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of the duties of a registered nurse position rather than a health services manager position. For example, the DOL states at page 268 of the Handbook that registered nurses work to promote health, prevent disease, and help patients cope with illness. They are advocates and health educators for patients, families, and communities. Nurses also develop and manage nursing care plans and instruct patients and their families in proper care.

A review of the Handbook at pages 268-270 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a registered nurse working as a medical coordinator in a private home. 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.

The offered position is not an administrative position in a health care facility, nor does it involve graduate study in nursing. In view of the foregoing, it is concluded that the offered position is that of a registered nurse and as such does not require a bachelor's degree in nursing for entry into the occupation.

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.