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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-01-065-51493

Office: Vermont Service Center

Date:

22 MAY 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 subacute and rehabilitation facility with more than 500 employees and a stated gross annual income of \$22 million. It seeks to employ the beneficiary as a subacute nurse for a period of two years and eleven months. The director determined that the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and copies of previously submitted 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 or higher degree is a standard minimum requirement for the job offered. On appeal, counsel argues that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree.

The Service does not agree with counsel's argument that the proffered position requires a bachelor of science degree in nursing. 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 a letter which accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- \* Neurological assessment
- \* Cardiac assessment
- \* Gastrointestinal assessment
- \* Integumentary system assessment

- \* GU assessment
- \* Mental status assessment
- \* Oral assessment
- \* Restorative potential assessment
- \* Visual assessment
- \* Hearing assessment
- \* Reproductive assessment
- \* Pain assessment

Thereafter, the petitioner provided an extensive and detailed description of duties comprising approximately two and one-half pages of text. These duties can be characterized as nursing duties associated with the stated practices, procedures, and functions of the petitioner's subacute unit.

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 subacute nurse would normally require a bachelor of science degree in nursing. The proffered position appears to be that of a registered nurse. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, finds no requirement of a baccalaureate or higher degree in a specialized area for employment 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.

As the record does not demonstrate that the beneficiary's proffered position is an administrative position, or a graduate nursing program in research, consulting, teaching, or a clinical specialization, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

In response to a Service request for additional evidence, counsel submitted a letter in which he asserted that the three individuals currently employed by the petitioner as subacute unit nurses all hold bachelor of science degrees in nursing. However, the record does not contain any evidence which would tend to corroborate that these individuals hold such a degree. Therefore, the petitioner has failed to establish that it has, in the past, required the services of individuals with baccalaureate or higher degrees for the offered position.

Counsel asserts that the requirement for a bachelor of science degree in nursing 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 such degree for positions as subacute unit nurses and managers, supervisors, MDS 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, the petitioner has not submitted sufficient evidence to demonstrate that the degree requirement is common to the industry in parallel positions among similar organizations.

Counsel argues that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor of science degree in nursing. However, as noted above, the Handbook does not provide any indication that a baccalaureate degree or higher is required for an individual to be employed in the capacity of a registered nurse. 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 an individual possessing a bachelor of science degree in nursing.

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.