



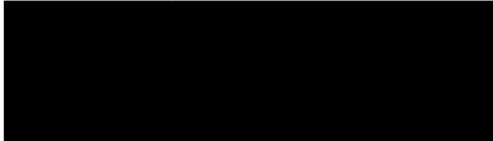
DA

U.S. Department of Justice

Immigration and Naturalization Service

**Identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: SRC-02-242-54238 Office: Texas Service Center

Date: NOV - 8 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:



**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, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, approved the nonimmigrant visa petition and certified his decision to the Associate Commissioner for Examinations for review. The decision of the director will be reversed. The petition will be denied.

The petitioner is a home health service agency with 40 employees and an estimated gross annual income of \$40,000. It seeks to employ the beneficiary as a quality control manager for a period of two years. The director approved the petition finding that the proffered position is a specialty occupation and the beneficiary qualifies to perform services in a specialty occupation.

On notice of certification, counsel submits a brief.

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 the classification of qualified nonimmigrant 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 the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) 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) further 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.

The director found the petitioner's initial evidence deficient and requested that the petitioner provide additional information and evidence to show that the offered position is a specialty occupation.

In response, counsel stated that the duties of the offered position do not involve any direct patient care. Counsel further stated that the beneficiary will review all patient files to determine whether the registered nurses, licensed practical nurses, and other medical staff employed by the petitioner perform their duties in accordance with Medicare and Medicaid regulations as well as State and local laws. Counsel asserted that the performance of these duties requires the theoretical and practical application of a body of highly specialized knowledge.

The director approved the petition based on a conclusion that the proffered position is a specialty occupation and the beneficiary qualifies to perform services in a specialty occupation.

In response to the notice of certification, counsel states that the Service has previously found parallel positions in similar organizations to be a specialty occupation. In support of this statement, counsel submits two vacancy announcements for quality improvement coordinator positions and two corresponding Forms I-797A notifying other petitioners that the Service had approved H-1B petitions for such positions.

Based upon a review of the record, it is determined that the director's reasoning in approving the petition was flawed. As shall be discussed below, the proffered position cannot be considered to be a specialty occupation.

The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The Service considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the beneficiary in the offered position as follows:

- a. Reviews, analyzes and evaluates work protocols, forms, procedures as well as systems in the provision of efficient and effective delivery of services;
- b. Performs audit and review of patient files as well as [sic] as services provided by contract health care employees in order to assess their competence and adherence to government rules and regulations;
- c. Oversees Company's compliance with all government rules and regulations in the provision of patient care;
- d. Recommends better and efficient techniques in health care services;

- e. Assists the Director of Nursing in the supervision of contract health care employees.

In response to a Service request for additional evidence, the petitioner provided the following, expanded description of the duties of the offered position:

- a. Understands and adheres to established [a]gency [p]olicies and [p]rocedures;
- b. Understand[s] and promotes principles of continuous performance improvement;
- c. Is responsible for the orientation of new staff to [a]gency's [p]erformance [i]mprovement [p]rogram;
- d. Assists in the preparation and implementation of policies and procedures which meet Medicare, Medicaid, JCAHO, state and local laws;
- e. Assists in the development of process improvement activities with appropriate data collection, aggregation, analysis and reporting of results according to the Agency's plan[;]
- f. Designs, reviews updates and implements the agency's total quality assurance plan;
- g. Identifies general and specific needs of the staff relative to their skills and make arrangements for them to receive training as indicated;
- h. Keeps abreast of current regulations and practice affecting the delivery of services[.]

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 proffered position as described by the petitioner appears to be that of a health services manager. According to the Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 74 the term "medical and health services manager" encompasses all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. The DOL states at page 75 of the Handbook:

Clinical managers have more specific responsibilities than generalists, and have training or experience in a specific clinical area. These managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

A review of the Handbook at page 75 finds 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 this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities. In this case, the petitioner does not even require a bachelor's degree in a health-related field for this position. The record contains the petitioner's vacancy announcement for the proffered position. The petitioner specifically indicates in the announcement that the minimum requirement for the job is: "B.S. or associates degree in nursing." Although the occupation of health services manager is generally considered to be a specialty occupation, this petitioner is willing to accept less than a bachelor's degree in a specific specialty for the proffered position. Therefore, the proffered position cannot be considered to be a specialty 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.

**ORDER:** The director's decision of August 22, 2002, is reversed. The petition is denied.