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U.S. Department of Justice
Immigration and Naturalization Service

PUBLIC COPY

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

[Redacted]

File:

[Redacted]

Office: California Service Center

Date:

18 NOV 2002

IN RE: Petitioner:
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)

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

IN BEHALF OF PETITIONER:

[Redacted]

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 nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the matter remanded for further action and consideration.

The petitioner is a home health agency providing medical care to patients in their homes. It has 34 employees and a stated gross annual income in excess of \$1.38 million. It seeks to employ the beneficiary as a quality assurance 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.

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.

The director denied the petition because the petitioner had not shown that a baccalaureate or higher degree in a specialized area is normally required for the proffered position. On appeal, counsel argues that the proffered position is a specialty occupation because a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position. Counsel contends that this degree requirement is common to the industry in parallel positions among similar organizations. Counsel asserts that the petitioner has shown that the proposed duties are so complex that the knowledge required to perform them is usually associated with the attainment of at least a baccalaureate 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 offered 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 beneficiary in the offered position as follows:

- * Reviews quality assurance standards and conducts studies on the existing Facility policies and

procedures and interviews health care professionals/workers and existing patients to evaluate effectiveness of quality assurance program.

- * Writes manual on quality assurance policies and procedures.
- * Reviews and evaluates patients' medical records to check for accuracy and proper diagnoses, treatment plans/medication, follow-up service applying principles of total quality.
- * Selects specific cases needing review such as problem procedures, administration of medications, quality of care provided by health care workers (CNA's, LVN's) to home bound patients especially the elderly.
- * Compiles statistical data based on feedback made by patients and their families regarding the level, kind and quality of quality [sic] of patient care they receive and prepare reports and recommendations to the Health Service Managers in order to enhance existing high quality practices and implement changes on procedures that need improvement using quality assurance criteria.
- * Conducts training and orientation with health care personnel on proper patients [sic] care.

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 appears to be that of a health services manager. A review of the Department of Labor's Occupational Outlook Handbook, (Handbook), 2002-2003 edition, at pages 74-77, 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. Additionally, the Handbook specifically notes that health services managers require training or experience in both health and management. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

Nevertheless, the petition may not be approved at this time. The director has not determined whether the beneficiary qualifies to perform services in a specialty occupation. Accordingly, the matter will be remanded to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.