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U.S. Department of Justice

Immigration and Naturalization Service

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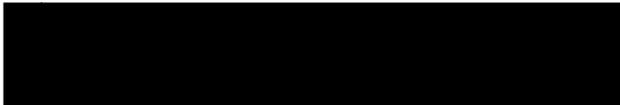
OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC-02-007-51376 Office: California Service Center

Date: NOV 25 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:

SELF-REPRESENTED

**PUBLIC COPY**

INSTRUCTIONS:

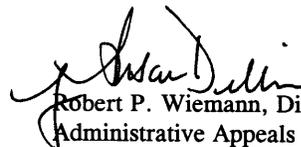
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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

The petitioner is a healthcare management services company with over 10 employees and a stated gross annual income of \$600,000. It seeks to employ the beneficiary as "medical and health services staff" for a period of three years. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, the petitioner submits a brief and additional documentation.

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) 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 concluded that the duties of the proffered position are consistent with those of a nurse supervisor, a job that does not require a baccalaureate degree in a specific specialty.

On appeal, the petitioner asserts that the proffered position parallels that of a medical and health services manager rather than that of a registered nurse supervisor. The petitioner further asserts that the specific duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in a specific specialty, in this case nursing.

The petitioner's assertions on appeal are not persuasive. 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 the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- \* Implement and administer programs and services for healthcare and medical facility;
- \* Responsible with [sic] administration of operations, directing and coordinating activities of medical, nursing, technical and clerical service and maintenance personnel of healthcare facilities;
- \* Develop or expand medical programs or health services for research, rehabilitation and community health promotions;
- \* Establish work schedules and assignments for staff nurses, according to workload, space and equipment availability;
- \* prepare activity reports to inform management of the status and implementation plans of programs, services and quality initiatives;
- \* And if needed, consult with medical, business, and community groups to discuss service problems, coordinate activities and plans, and promote health programs.

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.

While the duties of the proffered position appear to parallel those of a medical and health services manager, the Service is not persuaded to classify the proffered position as such. The petitioner is a healthcare services management company that acts as an agent providing medical staffing services to its clients. The petitioner states that it wishes to employ the beneficiary to work as "medical and health service staff" for its client, Valley House Care Center. The record contains a copy of the agency agreement between [redacted] identified as "Agent" in the agreement, and Valley House Care Center in Santa Clara, California, identified as "Hospital." This document was signed by Malcolm Burke, Administrator of Valley House Care Center ("Hospital") and by [redacted] Director of Marketing & Business Development for [redacted] ("Agent"). It is noted that the agency agreement identifies [redacted] as a division of [redacted]

The record also contains an addendum to this agreement, "Candidates Request Form." This document was also signed by Malcolm Burke as the authorized representative of Valley House Care Center. According to this document, Valley House Care Center is requesting that the petitioner provide two individuals to fill the position of "MHS Charge Nurse." The document describes the duties of this position as follows:

Charge nurse/supervision of resident care & related documentation to promote quality of life.

The minimum requirement for the job is described in this document as:

Job related skills and knowledge.

The following sentence appears in the lower portion of this document above the signature of Malcolm Burke:

Kindly complete and review this request form thoroughly. Signature of Owner/Supervisor of Company Officer will confirm request to [redacted] Kindly mail or fax request back. . . . Attn: [redacted]

The record contains the Corporate Business Plan of [redacted] According to the executive summary, [redacted] was incorporated

in the State of California and took over the technical recruitment operation of [REDACTED] in July 2000. The company stationery of [REDACTED] identifies that company as a division of [REDACTED]

It appears that the Candidates Request Form signed by Malcolm Burke relates to the proffered position. There would be no other logical reason for the petitioner to submit this document in conjunction with the agency agreement between [REDACTED] and Valley House Care Center and the employment agreement between Interglobal and the beneficiary. Since the requested position is identified as charge nurse and the duties are described as "charge nurse/supervision of resident care & related documentation to promote quality of life," it is concluded that the offered position is not actually that of a medical and health services manager as claimed by the petitioner, but rather that of a charge nurse/nurse supervisor.

A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at pages 268-270, finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a charge nurse/nurse supervisor. 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 are three major educational paths to registered nursing: associate degree in nursing (A.D.N.), bachelor of science degree in nursing (B.S.N.) and diploma. A.D.N. programs, offered by community and junior colleges, take about 2 to 3 years. About half of the 1,700 RN programs in 2000 were at the A.D.N.

. . . Generally, licensed graduates of any of the three program types qualify for entry-level positions as staff nurses.

. . . some career paths are open only to nurses with bachelor's or advanced degrees. A bachelor's degree is often necessary for administrative positions, and it 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 in nursing is required for the position being offered to the beneficiary.

In response to a Service request for additional evidence, the petitioner's in-house counsel stated that the petitioner had consulted other medical healthcare providers and found that the requirement of a bachelor's degree in nursing or a related field is common to the health care industry in parallel positions among similar organizations. In support of this statement, the petitioner submitted four "survey" forms signed by a representative of the following care providers: Daniel's Guest Home, Reyes Guest Homes, Superior Staffing & Wish-I-Ah Care Center, and San Miguel's Group of Company. The attention of the Service is drawn to the fact that the job title (medical and health service staff/manager), job description, and stated minimum educational requirement (B.S. pref nursing) are identical on each of these "survey" forms, all of which are drafted on [REDACTED] letterhead stationery. The Service must question whether these "survey" forms represent the actual job titles, position descriptions, and minimum educational requirements of these purported medical care providers. None of the individuals who signed the "survey" forms provided any independent evidence to corroborate the information provided on the forms. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I&N Dec. 582. (Comm. 1988). Consequently, it cannot be concluded that the petitioner has submitted sufficient evidence to show that the degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner's claim that it requires a BSN for the proffered position is problematic when viewed in light of the statutory definition of specialty occupation. The petitioner's creation of a "medical and health services staff position" with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. The Service must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. Cf. Defensor v. Meissner, 201 F.3d 384 (5th Cir. 2000). The critical element is whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act.<sup>1</sup> To interpret the regulations any other way would lead to

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<sup>1</sup> The court in Defensor v. Meissner observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might

absurd results: if the Service was limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have bachelor's degrees. See id. at 388.

In this case, although the petitioner claims it requires a BSN for its medical and health service staff positions, the position, nevertheless, does not meet the statutory definition of specialty occupation. The position appears to actually be that of a registered nurse supervisor, an occupation that does not require a BSN. The record, as it is presently constituted, does not contain any evidence to show that any of its past or current "medical and health service staff" possess a baccalaureate degree in nursing or a related field. Therefore, the petitioner has failed to establish that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position.

Finally, the petitioner has not shown that the duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in a specific specialty. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a bachelor's degree in a specialized area is the minimum requirement for employment as medical and health service staff/nurse supervisor. The Handbook specifically notes that a nurse supervisor's duties include both supervisory and management functions such as planning work schedules, assignment of duties, provision of training programs, records maintenance, and ordering of supplies and equipment.

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.

**ORDER:** The appeal is dismissed.

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also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." Supra at 387.