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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-01-138-54745 Office: Vermont Service Center

Date: SEP 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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a non-profit organization operating a hospital with 1,100 employees. It seeks to employ the beneficiary as a registered nurse/charge nurse for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a brief and additional 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, the petitioner argues that the proffered position is a specialty occupation requiring a bachelor of science degree in nursing.

The Service does not agree with the petitioner'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:

- * Leads a team of multi-skilled patient care providers in the delivery of out-come oriented, safe, therapeutic and cost effective care. Identifies patient needs based on professional knowledge and medical plan of care.
- * Responsible for establishing individual outcome measures for each patient's care, delegates

interventions based on critical thinking skills and an understanding of the competencies of the team members.

- * Coordinates care to maximize desirable outcomes, customer satisfaction, and cost effective utilization of available personnel and resources. Serves as a representative of the hospital and as a clinical role model in all interactions with customers and other staff members.
- * Ensures the team's compliance with hospital, departmental and regulatory requirements for the care of patients, to include quality monitoring and improvement, incident reporting, outcome measurement, and consistency with unit goals.

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 the petitioner's argument that the proffered position of registered nurse/charge nurse would normally require a bachelor's degree in nursing or a related field. The proffered position appears to be that of a nursing 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 registered nurse working in the capacity of nurse supervisor. Some registered nurses hold baccalaureate degrees while others hold diplomas or associate (two-year) degrees. Additionally, the

Handbook indicates that attempts to raise the educational requirements for a registered nursing license to a baccalaureate degree in nursing have not been successful.

The petitioner contends that 92% of the petitioner's current nursing staff is comprised of individuals holding bachelor's of science degrees in nursing. However, the petitioner has failed to submit any evidence that would tend to support such a claim. 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.

Additionally, it must be noted that the record contains another job description submitted by the petitioner for the position of "Registered Nurse II (Charge Nurse)." The petitioner lists the minimum education and experience required for the position of Registered Nurse II (Charge Nurse) as either a bachelor's of science in nursing and six months experience or an associates degree with two years of experience. For purposes of determining equivalency to a baccalaureate degree, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. Utilizing this standard, it is clear that the minimum education and experience requirement of an associate's degree and two years of relevant experience for the position of Registered Nurse II (Charge Nurse), would not qualify as a baccalaureate degree. While the duties listed for the position of Registered Nurse II (Charge Nurse) are not exactly those listed for the proffered position, the duties are so substantially similar that the two positions appear to be one and the same. The petitioner has failed to provide any explanation for the differing requirements and standards imposed upon what is essentially the same position.

The petitioner argues that the degree requirement is common to the industry in parallel positions among similar organizations. In an attempt to provide evidence of an industry standard, the petitioner has submitted three letters signed by Margaret A. Miklancie, PhD., RN, Assistant Professor, College of Nursing & Health Science at George Mason University, Jeanne M. Sorrell, PhD., RN, Coordinator, PhD in Nursing Program at George Mason University, and Colonel Margarita Aponte, Deputy Commander for Nursing, Department of the Army, Headquarters Dwight David Eisenhower Army Medical Center at Fort Gordon, Georgia, respectively. Dr. Miklancie, Dr. Sorrell, and Colonel Aponte all indicate their support for a minimum requirement of a bachelor of science degree in nursing for employment as a charge nurse. However, three letters are insufficient evidence of an industry standard. In addition, none of the writers has provided any independent evidence which would tend to support their opinions. Accordingly, it cannot be concluded that the petitioner has demonstrated that the degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner asserts 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's degree. However, as noted above, the Handbook does not provide any indication that a baccalaureate degree or higher is required to be employed as either a registered nurse or a nurse supervisor. Furthermore, the petitioner has not provided any documentation to corroborate this assertion. As such, it has not been persuasively established that the duties of the proffered position are so complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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.