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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
BCIS, AAO, 20 MASS, 3/F
Washington, DC 20536

AUG 18 2003

File: WAC 02029 56439 Office: CALIFORNIA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:

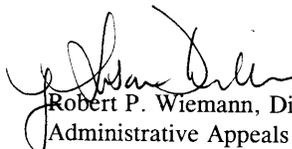
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a Los Angeles hospital with 350 employees and a gross annual income of \$63,221,273. The petitioner seeks to temporarily employ the beneficiary for three years as a quality assurance coordinator. The director denied the petition, finding that the petitioner had not established that the proffered position was a specialty occupation. The reasoning given for this conclusion, however, appears to hinge on the applicant's qualifications rather than on the status of the position itself.

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.

The term "specialty occupation" is defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

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 described the proffered duties as follows:

- Interprets and implements quality assurance standards in the hospital to ensure quality care to the patients
- Reviews quality assurance standards and studies hospital facilities policies and procedures
- Interviews hospital medical personnel and patients to evaluate effectiveness of the staff's performance
- Reviews and evaluates patients' records applying quality assurance criteria
- Selects specific topics for review
- Compiles statistical data and writes reports summarizing quality assurance findings
- Applies utilization review criteria and reviews patient records and personnel engaged in review work product of resident nurses and other medical personnel

The petitioner has established that the beneficiary has a Bachelor of Science degree in nursing from a Filipino university, and that she is a registered nurse in the Philippines. She also has two years' work experience in the nursing field.

In his denial, the director noted that the proffered position appears to fit the description of a health services manager, as found on page 74-76 of the DOL *Occupational Outlook Handbook (Handbook)* for 2002-2003. The *Handbook* points out that a master's degree in health services administration, public health, public administration, or business administration is the standard credential for most such positions. In addition, the *Handbook* specifies that health services managers require training or experience in both health and management.

On appeal, counsel submits a brief and several job announcements. Counsel states that the proffered position is a specialty occupation, which the Bureau concedes, if the position is classified as a health services manager. Counsel points out that the *Handbook* mentions that a bachelor's degree is adequate for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations. The evidence does not show that the petitioner is a small facility or healthcare organization, and there is insufficient information on record to determine at what organizational level the beneficiary would function. The job description gives the impression that her oversight would encompass the entire facility, which is the level of authority that requires a master's degree.

Although the petitioner has shown that the proffered position is a specialty occupation and has, therefore, overcome the director's reason for denying the petition, the petition may not be approved at the present time. As the record is presently constituted, the evidence is not persuasive that the beneficiary is qualified to perform the duties of the proffered position. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

As noted above, the minimum standard for entry into most positions in the field of health services management is a master's degree in health services administration and related studies. Since the beneficiary does not have a master's degree, nor is there information that she has received training or has experience in any of the administrative fields set forth in the *Handbook*, it does not appear that she meets the minimum entry standard for this profession.

The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of the beneficiary's qualifications for the proffered position, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the statutory and regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision of June 19, 2002 is withdrawn. The matter is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.