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

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS. 3/F
Washington, D.C. 20536

Aug 18 2003

File: LIN 01 264 52136 Office: NEBRASKA 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:

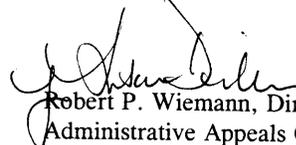
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a home health company offering home health care services to homebound patients. It has 105 employees and a gross annual income of \$4,251,917. The petitioner seeks to employ the beneficiary as a nurse in a quality assurance capacity for a period of two years. The director denied the petition on the ground that the proffered position is not a specialty occupation.

On appeal, counsel indicated that a brief would be filed within 30 days of filing of the appeal. The appeal was filed on April 1, 2002. On February 3, 2003, the AAO contacted counsel indicating that a brief had not been received. Counsel failed to submit a brief, or any additional evidence supporting the appeal. The record is therefore, deemed complete, and a decision will be rendered based upon the evidence in the record of proceeding.

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 Immigration and Nationality Act (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 further 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.

The petitioner asserts that the proffered position is a specialty

occupation. The Bureau does not simply rely on a position's title however, 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 Bureau considers. The beneficiary's job responsibilities were described by the petitioner as follows:

I. POSITION DESCRIPTION

Plans, organizes, coordinates and supervises the staff to ensure the most cost-effective and high-quality care. Works towards optimum development of Outcome Based Quality Monitoring through maintenance of professional standards of care through employee and patient education.

II. RESPONSIBILITIES

- Assesses needs of the department and personnel, plans, evaluates services to meet stated goals in the health care facility.
- Reviews quality assurance standards and audits charts for completeness on an ongoing basis to ensure that all documentation has been obtained to support claim for payment.
- Completes clinical review audit sheets and discusses findings with professional staff regarding deficiencies and recommends corrective measures.
- Gives appropriate feedback to staff on an individual basis at least bimonthly/monthly in an effort to maintain standards on documentation and quality care.
- Reviews charts for quality care rendered, i.e., orders followed, appropriate utilization of visits, communications with physician and coordination with other disciplines.
- Audits clinical notes, admissions, recertifications and discharges submitted by professional staff daily.
- Compares RN Case Manager's visit notes submitted daily against schedule of visits and inform of missing notes.

- Demonstrates a working knowledge of the Agency's Outcome Based Quality Monitoring Model and ORYX and its application.
- Selects specific areas for review such as problem procedures, drugs, high volume cases, high-risk cases or other factors.
- Compiles statistical data and writes narrative reports summarizing findings.
- Monitors key activities and outcomes and obtain solutions to problems and improve services and operations in cost-effective manner.
- Monitor key activities and operations in cost effective manner.
- Participates in the development and update of policies and procedures in compliance with all federal, state, local and accrediting agencies.

Subsequent to the filing of the petition, the director requested from the petitioner a detailed job description, an explanation of how the beneficiary's training and/or coursework is related to the specialty occupation and evidence of any past work experience that qualifies the beneficiary to perform the duties associated with the proffered position. In response to this request, counsel for the petitioner stated that the beneficiary would implement quality assurance standards in the health care facility to ensure quality care of patients. It would be the beneficiary's responsibility to determine that provided health care services are consistent with the standards of quality care generally accepted in the medical community. Counsel then restated the requirements of the proffered position.

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 qualify the offered position as a specialty occupation. The job responsibilities to be assigned to the beneficiary fall within the duties of a registered nurse, and head nurse or nurse supervisor. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at pages 268 - 269, the Department Of Labor describes in part, the duties of a registered nurse, and head nurse or nurse supervisor:

Registered nurses (RNs) work to promote health, prevent disease, and help patients cope with illness. They are advocates and health educators for patients, families, and communities. When providing direct patient care, they observe, assess, and record symptoms, reactions and progress; assist physicians during treatments and examinations; administer medications; and assist in convalescence and rehabilitation. RNs also develop and manage nursing care plans; instruct patients and their families in proper care; and help individuals and groups take steps to improve or maintain their health. While State laws govern the tasks that RNs may perform, it is usually the work setting that determines their daily job duties. . . . Nursing home nurses manage nursing care for residents with conditions ranging from a fracture to Alzheimer's disease. Although they spend much of their time on administrative and supervisory tasks, RNs also assess resident's health condition, develop treatment plans, supervise licensed practical nurses and nursing aides, and perform difficult procedures such as starting intravenous fluids. . . .

Head nurses and nurse supervisors direct nursing activities. They plan work schedules and assign duties to nurses and aides, provide or arrange for training, and visit patients to observe nurses and to ensure proper delivery of care. They also may see that records are maintained and equipment and supplies are ordered . . .

Some nurses move into the business side of healthcare. Their nursing expertise and experience on a healthcare team equip them to manage ambulatory, acute, home health, and chronic care services. Healthcare corporations employ nurses for health planning and

development, marketing, and quality assurance . . .

A review of the *Handbook* finds no requirement of a baccalaureate or higher degree in a specialized area for employment in the proffered position.

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. level. B.S.N. programs, offered by colleges and universities, take 4 or 5 years. More than one-third of all programs in 2000 offered degrees at the bachelor's level. Diploma programs, administered in hospitals, last 2 to 3 years. Only a small number of programs offer diploma-level degrees. Generally, licensed graduates of any of the three program types qualify for entry-level positions as staff nurses. *Id.*

Any of the three career paths noted above are sufficient for the beneficiary to perform the duties associated with the offered position. Experience and good performance can lead to promotion for a registered nurse to more responsible positions, such as assistant head nurse or head nurse/nurse supervisor. *Id.* at 269. Likewise, good performance and experience can equip a nurse to perform the duties of a quality assurance coordinator in the healthcare field. There is no requirement however, that a nurse have a baccalaureate or higher degree, or its equivalent, as a minimum requirement for entry into those positions. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h) (4) (iii) (A).

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. Third, the petitioner failed to present sufficient evidence to establish that parallel positions among similar organizations in the industry commonly require a bachelor's degree or its equivalent, or that the subject position is so complex or unique that it could be performed only by an individual with a bachelor's degree. Counsel did submit copies of various job advertisements indicating that a degree was required for the those positions. Those advertisements do not contain sufficient information, however, to determine that they are parallel to the offered position. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform those duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent.

The petitioner has failed to establish that any of the four

factors enumerated above are present in this proceeding. It is therefore, 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.