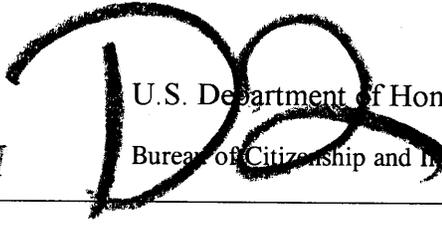


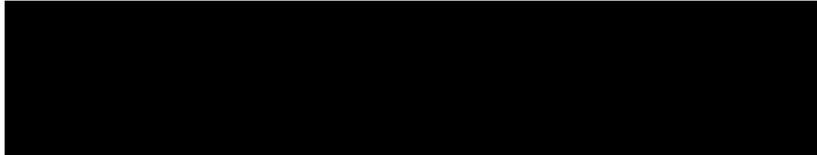
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prevent clearly unwarranted
invasion of personal privacy**



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: EAC 01 244 55139 Office: Vermont 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:



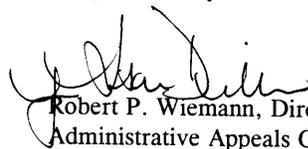
INSTRUCTIONS:

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, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a skilled nursing facility. It has 160 employees and a gross annual income of \$7,000,000. The petitioner seeks to employ the beneficiary as a physician assistant (PA) for a period of three years. The director determined that the petitioner failed to establish that the proffered position was a specialty occupation.

On appeal, counsel indicated that he would file a brief within 30 days. The appeal was filed on April 10, 2002. The AAO contacted counsel on February 3, 2003, indicating that no brief had been received. Counsel has failed to file a brief or offer additional information in support of the appeal. The record is therefore, deemed complete, and a decision will be rendered based upon the evidence in the record of proceeding.

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 position of physician assistant is a specialty occupation. The Bureau does not, however, simply rely on a position's title 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.

Subsequent to the filing of the petition, the director requested from the petitioner a detailed job description and other relevant information. In response to this request the petitioner provided:

POSITION: PHYSICIAN ASSISTANT

DUTIES AND RESPONSIBILITIES:

- Assist in the physical examination of patients and compiles patient medical data, including health history and results of physical examination.
- Administers or orders diagnostic tests such as x-rays, electrocardiograms and or laboratory tests and interprets test results for deviation from normal.
- Performs therapeutic procedures such as injections, immunizations and wound care and managing infection.
- Contributes to the development and implementation of patient management plans, records progress notes and assist in providing continuity of care.
- Instructs and counsels patients regarding compliance with prescribed therapeutic regimens, normal growth and development, family planning, emotional problems of daily living and health maintenance.
- Maintains open and constructive communication with all nursing personnel during the shift and report.
- Coordinates physician's orders/services.
- Observes and assesses residents on a daily basis and report changes in patients/residents conditions.
- Assists in making rounds with physicians/RN's, LPN's and communicates pertinent information and notes to supervisor and follows through out with his/her orders.
- Checks laboratory work.
- Listens to all complaints/comments.

- Assists in answering questions from CNA's (nurse aides) regarding any resident problems or changes.
- Documents assessments, interventions and therapies administered on the nursing flow sheet to be countersigned by the supervisor.
- Anticipates safety problems and intervenes appropriately.
- Performs various technical nursing procedures according to protocol such as maintaining oxygen equipment giving tube feeding, changing sterile dressing, collecting specimens, etc.

The Bureau asked the petitioner to differentiate between the duties of a physician assistant and a nurse at the beneficiary's proposed place of employment, but the petitioner failed to do so. The petitioner indicates that the educational requirements of the proffered position require graduation from a four year accredited school of nursing with at least two years of nursing/health care experience. That course of education, however, would not qualify the beneficiary to perform the duties of a physician assistant in the Commonwealth of Virginia. In order to perform the duties of a PA in Virginia, the beneficiary would be required to complete a physician assistant program or surgeon assistant program accredited by the American Medical Association (AMA), or a committee of the AMA established to approve or accredit allied health education programs. Va. Code Ann. § 54.1-2951.1 (1998). The educational requirements set forth by the petitioner do not appear to meet that requirement.

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. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at page 260, the Department Of Labor describes in part, the duties of a physician assistant as follows:

Physician assistants (PAs) provide healthcare services under the supervision of physicians. . . . PAs are formally trained to provide diagnostic, therapeutic, and preventive healthcare services, as delegated by a physician. Working as a member of the healthcare team, they take medical histories, examine and treat patients, order and interpret laboratory tests and x rays, make diagnosis, and prescribe medications. They also treat minor injuries by suturing, splinting, and casting. PAs record progress notes, instruct and counsel patients, and order or carry out therapy. In 47 States and the District of Colombia, physician assistants may prescribe medications. . . .

All States require physician assistants to complete an accredited, formal education program. As of July, 2001, there were 129 accredited educational programs for PAs. Those programs offered degrees ranging from an associates degree to a master's degree. Admission requirements to the various PA programs vary. Many require two years of college and some work experience in the healthcare field. The PA program itself usually lasts at least two years. Not all PA programs require two years of college as a prerequisite to admission as they are found in community colleges, the military and hospitals. Thus, a PA can obtain licensing with less than a baccalaureate or higher degree, or its equivalent. The Commonwealth of Virginia does not require a bachelor's degree, or its equivalent, for licensure as a physician assistant. See Va. Code Ann. § 54.1 - 2951.1. The petitioner has therefore, 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 any 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. 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.