

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

AUG 18 2003

File: WAC 02 176 52066

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:

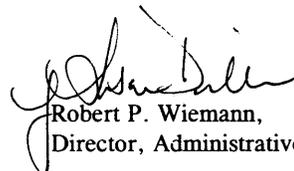
INSTRUCTIONS:

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

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DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Santa Clara, California healthcare staffing company that has 140 employees and a gross annual income of \$5 million. It seeks to temporarily employ the beneficiary as a caseworker for a period of three years. The beneficiary's worksite would be the Terraces of Los Gatos, a facility that offers housing, health care, and supportive services to elderly patients. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the proffered position corresponds to that of clinical or healthcare social worker; thus, it is 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 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.

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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. The petitioner indicated that the job duties would include interviewing and evaluating the physical and mental condition of patients in order to establish a service plan for them, instituting preventative measures to avoid health problems of patients, recording and reporting patient status to physicians and other medical personnel, providing patients and their families information on good health habits, and helping patients understand the social and emotional factors underlying particular health problems.

The director found that this description does not correspond with that of health care or clinical social worker, as listed in the Department of Labor's *Occupational Outlook Handbook (the Handbook)* 2002-2003 edition at page 161. The director likened the proffered position to that of a social and human services assistant, as described in the *Handbook*. On appeal, counsel states that the job described by the petitioner is similar to Dictionary of Occupational Titles (DOT) job descriptions for clinical or healthcare social worker and caseworker, and is different in critical respects from the DOT description of social and human services assistant.

It appears that counsel finds the principal difference between the proffered position and that of social and human services assistant to be the level of supervision required by the latter. The *Handbook*, however, at page 159, notes that some social and human services assistants may have more autonomy than others, illustrating that the level of supervision is not necessarily a critical factor in deciding whether the proffered position is closer to that of caseworker or assistant.

The *Handbook's* description of social workers' duties highlights their roles as counselors and links to providers of social services. The description offered by the petitioner is somewhat vague and more limited and fails to state important details, such as how much psychological diagnosis and counseling is involved. It is difficult to

ascertain, from the petitioner's description, if social worker is the most accurate *Handbook* job title available.

With respect to the criterion described in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, the petitioner has failed to provide any documentation to this effect. In addition, the description of the job duties of the proffered position is vague and generalized, rendering it impossible to make a comparison between this position and those described in reference sources such as the Department of Labor's *Occupational Outlook Handbook*. Accordingly, the evidence does not support a finding that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

Regarding the criterion set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that the degree requirement is common to the industry in parallel positions among similar organizations, the record contains no documentation of industry standards with respect to degree requirements for this particular type of position. Nor has the petitioner made the alternative showing that this position is so complex or unique that it can be performed only by an individual with a degree.

Turning to the criterion found at § 214.2(h)(4)(iii)(A)(3), that the employer normally requires a degree or its equivalent for the position, the record contains no evidence on the petitioner's past hiring practice regarding the proffered position.

Finally, regarding the criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), that the job 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 or higher degree, the record contains no evidence to support this criterion. The description of the duties of the proffered position is vague and fails to provide sufficient detail to ascertain the exact nature of the job. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Due to the ambiguous account of the duties of the proffered position, it is not possible to determine whether or not they are usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four criteria 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.

Although the director did not focus on the beneficiary's qualifications, the fact that her degree and prior work experience is in nursing brings up the issue of whether she would be considered qualified to work as a social worker in California. The *Handbook* states that the minimum entry requirement for a job as a social worker is a bachelor's degree in social work, although majors in psychology, sociology, and related fields may be sufficient to qualify for some entry-level jobs. This indicates that fields relating to social work would be those in the realm of psychology, counseling, or social science. Nursing and medical studies have a different focus, and in fact are not mentioned at all in the *Handbook* as related fields for the purpose of minimum qualifications. Thus, even if the Bureau accepted that the proffered position is that of social worker, the applicant's qualifications to practice as a social worker are in doubt.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.