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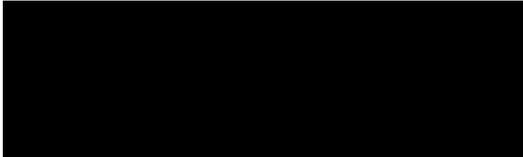
ED2

U.S. Department of Homeland Security

Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536

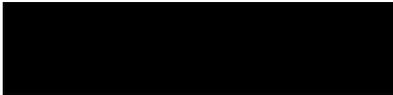


FILE: EAC 02 138 51547 Office: VERMONT SERVICE CENTER

Date:

DEC 29 2003

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:



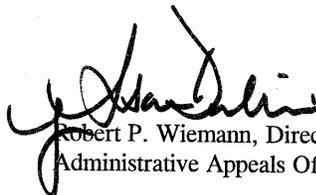
INSTRUCTIONS:

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

The petitioner is a professional healthcare services business. It employs 1,000 people and has a gross annual income of \$5,000,000. It seeks to temporarily employ the beneficiary as a nurse supervisor for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the director erred in making his decision and that the position 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:

[A]n 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 director denied the petition because he determined that the proffered position was not a specialty occupation based on the position description.

There are multiple inconsistencies in the record, which makes it impossible to determine the duties of the proffered position or even whether the position actually exists. Accordingly, it is not possible to determine whether the position is a specialty occupation.

The information submitted with the Form I-129 states that the title of the position is "nurse supervisor" and that the position is in the operating room of the client hospital. The information submitted in response to the director's request for additional evidence, however, states, "The beneficiary will be placed in the Rusk Institute of Rehabilitation Medicine at NYU Hospital." Clearly, an operating room nurse supervisor and a rehabilitation nurse supervisor will have vastly differing duties and responsibilities.

The title of the proffered position is not consistent in the documentation submitted by the petitioner. As noted above, on the Form I-129, the position is listed as nurse supervisor. On the flow charts describing the hospital's staff structure, the position highlighted as the proffered position is that of "Senior Nurse Clinician/Nurse Clinician/Senior Staff Nurse/Staff Nurse." The hospital's position description submitted by the petitioner is for an "Assistant Nurse Manager." In addition to the discrepancies in the title, the position of assistant nurse manager does not exist on the flow chart for Rusk Institute of Rehabilitation Medicine; although it does exist on the Operating Room flow chart, the position marked as being the proffered position is again for a senior nurse clinician/nurse

clinician/senior staff nurse/staff nurse, rather than for an assistant nurse manager.

Finally, the agreement between the petitioner and the client hospital, which was submitted in response to the director's request for evidence, is a contract that covers private duty nursing. There is no reference in the contract to providing regular staff or supervisory nurses for the hospital, and, therefore, it is not clear that the proffered position actually exists.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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.