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U.S. Department of Justice

Immigration and Naturalization Service

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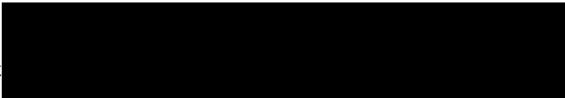


OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC-01-063-53005 Office: California Service Center

Date: FEB 10 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)

PUBLIC COPY

IN 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further consideration.

The petitioner is a residential care home with two employees and a gross annual income of \$153,144. It seeks to employ the beneficiary as a residential care home administrator for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

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 nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that the beneficiary has the appropriate baccalaureate degree, passed the appropriate licensing examination, completed a State-approved training program, or is pursuing continuing education. On appeal, counsel states, in part, that the beneficiary's bachelor degree in math and physics is an appropriate degree for the proffered position. Counsel further states that the proffered position is not that of a nursing home administrator and, therefore, does not require State licensing. Counsel further states that the petitioner caters to mentally disabled adults and does not have patients with serious medical problems, as those found in a nursing home.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The duties are being responsible for budget planning and accounting...routine direction and coordination of Caregiver activities. The Caregiver provides residents with personal hygiene, medication, recreational and rehabilitative activities. Other tasks include administering clerical functions such as client updates, current physician's reports on annual medications and attending meetings to maintain bylaws and regulations pertaining to residential care facilities.

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.

The proffered position appears to combine the duties of an office and administrative support worker manager with those of a bookkeeper. (It is noted that the beneficiary is also assigned to perform clerical duties.) A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 418, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as an office and administrative support worker manager. Most businesses fill administrative and office support supervisory and managerial positions by promoting clerical or administrative support workers within their organizations. In addition, certain personal qualities such as strong teamwork and problem solving skills and a good

working knowledge of the organization's computer system are often considered as important as a specific formal academic background.

A review of the Handbook at page 380 also finds that the usual requirement for a bookkeeping or accounting clerk is at least a high school diploma or its equivalent. Some college, however, is becoming increasingly important, particularly for those occupations requiring knowledge of accounting. For positions such as bookkeepers and accounting and procurement clerks, an associate's degree in business is often required.

The beneficiary holds a bachelor of science degree in mathematics and physics conferred by a Filipino institution. A credentials evaluation service found the beneficiary's foreign education equivalent to a bachelor's degree in mathematics and physics from an accredited college or university in the United States. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position.

The director has not determined whether the proffered position is a specialty occupation. Accordingly, the matter will be remanded to her to make such a determination and to review all relevant issues. The director may request any additional evidence she deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to her for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.