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ADMINISTRATIVE APPEALS OFFICE
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Washington, DC 20536



JUL 02 2003

File: WAC 02 074 51261 Office: CALIFORNIA SERVICE CENTER

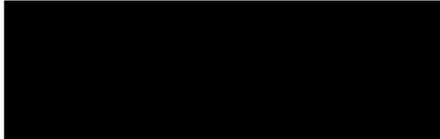
Date:

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:



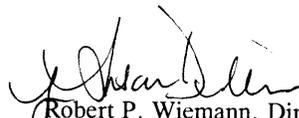
INSTRUCTIONS:

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

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a Los Angeles acute care hospital with 350 employees and a gross annual income of \$63,221,273. It seeks to temporarily employ the beneficiary as an emergency medical services coordinator. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the position of emergency medical services coordinator is a specialty occupation that is similar to a health services manager position.

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.

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. In the original petition received by the California Service Center on December 29, 2001, the petitioner identified the position as a emergency medical services coordinator and described the duties of the proffered position as follows:

Coordinate activities of nursing personnel for hospital's Emergency Medical Services. Serves as liaison between staff and administrative department. Coordinates activities of nursing personnel in hospital's Emergency Medical Services Department. Consults with medical and professional staff of other departments to plan and coordinate patient and management objectives. Conducts staff conferences and plans training programs to maintain proficiency of staff in rendering emergency medical services.

The petitioner also provided the following expanded description of the position:

[The beneficiary] will direct the hospital's medical emergency service program and coordinate activities of persons involved in rescue, transportation, care of accident or catastrophe victims, and others requiring emergency medical assistance. [The beneficiary] will arrange for the establishment of emergency medical facilities, staffing of facilities by emergency-trained medical and auxiliary personnel, installation of telecommunication network components, and acquisition of emergency vehicles. [The beneficiary] will maintain records of facilities and personnel, and periodically inspect facilities to ensure capability of meeting area's emergency needs. [The beneficiary] will maintain telecommunication contact with mobile and stationary units comprising emergency service network to coordinate activities of personnel, enlist services of other protective agencies, or provide alternate directions to on-scene emergency personnel when planned procedures are not feasible. [The beneficiary] will be responsible for developing, planning, and participating in training programs for ambulance and rescue personnel. [The beneficiary] will maintain records of emergency medical

service activities, for coordination with records prepared by cooperating institutions, to provide data for evaluation of program. She will prepare reports stating progress, problems, and plans for future implementation of emergency service for community or area, for review by officials of sponsoring agency. [The beneficiary] will be responsible for coordinating with other coordinators of emergency programs in other areas to discuss problems, coordinate activities, and cooperate in area or statewide plans.

The position assumes advanced knowledge of medical and/or nursing standards which is typically obtained through completion of a bachelor's degree in the medical sciences or related field. Petitioner, like most employers, requires a bachelor's degree in nursing or health services administration or medicine.

On February 25, 2002, the director denied the petition. After listing a brief summary of the job description submitted by the petitioner, the director stated that the actual duties of the position, rather than the job title, are determinative of whether a job is a specialty occupation. In addition, the director stated that the petitioner failed to provide evidence to establish that the proffered position was complex or unique enough to require a baccalaureate degree for entry into the position.

On appeal, to establish the complexity or uniqueness of the position, counsel submits a multiple page description of a position described as similar to a health services manager that includes references to emergency medical services administration.

Upon review of the record, the petitioner initially submitted a substantive description of the duties of the proffered position that expanded the Bureau's knowledge of the position beyond the title of the position. While the job description is not determinative of whether the job is a specialty occupation or whether the beneficiary is qualified to perform the duties of the position, the record is not clear as to why the director requested no further evidence from the petitioner prior to the denial of the instant petition. With regard to requests for further evidence, 8 C.F.R. § 103.2 (b) (8) states, in part:

[I]n other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the [Bureau] finds that the evidence submitted either does not fully establish eligibility of the requested benefit or raises underlying questions regarding eligibility, the [Bureau] shall request the missing initial evidence, and may request additional evidence, and may request additional evidence. . . .

Based on the information submitted for the record in the original filing, the record does not contain sufficient evidence as to why the petitioner was not provided with an opportunity to submit additional information to fully establish eligibility, or answer underlying questions regarding eligibility. Without such an opportunity, the present determination is found to be insufficient.

Accordingly, this case shall be remanded to the director so that she may request additional information with regard to whether the proffered position is a specialty occupation, and whether the beneficiary is qualified to perform the duties of the proffered position.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision of the director is withdrawn. The case is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.