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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



JUL 12 2009

File: WAC 01 065 54955 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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: SELF-REPRESENTED

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
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a convalescent hospital with 165 employees and a gross annual income of \$4 million. It seeks to employ the beneficiary as a unit coordinator for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a brief and additional documentation.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), 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.

The director concluded that the petitioner had failed to establish that the proffered position requires a Bachelor of Science Degree in Nursing (BSN) or its equivalent.

On appeal, the petitioner states that the Bureau improperly denied the petition without providing the petitioner with an opportunity to submit additional evidence in support of the petition. The petitioner asserts that it requires a BSN degree for the position in question.

When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the proffered position combined with the nature of the petitioning entity's business operations. In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

As Unit Coordinator, she will be assigned in the coordination of the nursing staff department. She will assist the Registered Nurse Supervisor, assist with completion of admissions & discharges, assist with assessments (MDs' & care plans), assist with nursing schedules, assist with handling the personnel department, attend the nursing staff meeting, and oversee condition changes.

In addition to the above, her duties and responsibilities will also include: Assisting with resident care, will monitor laboratory results supervise[d] by the RN supervisor and doing other duties that maybe [sic] assigned by the supervisor from time to time.

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 classify the offered position as a specialty occupation.

On November 27, 2002, the Bureau issued a policy memorandum on H-1B nurse petitions (nurse memo). In the memo, the Bureau acknowledged that an increasing number of nursing specialties, such as critical care and operating room care, require a higher degree of knowledge and skill than a typical RN or staff nurse position.¹ However, the mere fact that a nursing position has a title such as "unit coordinator" does not necessarily mean that it qualifies as a specialty occupation.²

The duties of this particular position appear to be those of a nurse supervisor. The Department of Labor (DOL) describes the duties of a nurse supervisor at page 268 of its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, as follows:

Head nurses or nurse supervisors direct nursing activities. They plan work schedules and assign duties to nurses and aides; provide or arrange for training, and visit patients to observe nurses and to ensure the proper delivery of care. They also may see that records are maintained and equipment and supplies are ordered.

¹ Memorandum from [REDACTED] Executive Associate Commissioner, Office of Field Operations, *Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses*, HQISD 70/6.2.8-P (November 27, 2002.)

² It is worth noting that the nurse memo also mentions that certification examinations are available to registered nurses who work in such nursing specialties and possess additional clinical experience, but who are not advanced practice nurses.

The DOL describes the training and educational requirements for registered nurse/supervisory nurse positions at page 269 of the *Handbook* as follows:

There are three major educational paths to registered nursing: associate degree in nursing (A.D.N.), bachelor of science degree in nursing (B.S.N.), and diploma. . . . Generally, licensed graduates of any of the three program types qualify for entry-level positions as staff nurses.

. . . .

. . . [S]ome career paths are open only to nurses with bachelor's or advanced degrees. A bachelor's degree is often necessary for administrative positions, and it is a prerequisite for admission to graduate nursing programs in research, consulting, teaching, or a clinical specialization.

As the record does not demonstrate that the proffered position is an administrative position, or a graduate nursing program in research, consulting, teaching, or a clinical specialization, it is concluded that the petitioner has not demonstrated that a baccalaureate degree in a specific specialty is normally the minimum requirement for entry into the occupation.

Furthermore, the petitioner has not shown that the degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner states that it requires a BSN degree for the position in question. On appeal, the petitioner submits a "Job Order/Manpower Request" form signed by [REDACTED] Administrator of Longwood Manor Convalescent Hospital. According to this document, Longwood Manor requested that Manpower recruit one individual for a position entitled "unit coordinator." The stated requirement for this job is "bachelor's degree in nursing or higher preferably experienced." However, the petitioner has not submitted any evidence to show that the duties of the job listed in the job order are the same as those of the proffered position or, indeed, that the unit coordinator position referenced in the job order is identical to this position. It is noted that the job request was signed on June 8, 2000. The I-129 petition contained in this record of proceeding was not submitted until January 2, 2001. In view of the foregoing, it cannot be concluded

the petitioner has submitted sufficient evidence to show that it required a bachelor's degree in nursing as part of the hiring process for this particular position.

Finally, the petitioner has failed to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The petitioner contends that the denial of the petition is erroneous because the director did not issue a request for additional evidence. After careful review of the record of proceeding, it is concluded that there is no obvious evidence of ineligibility in the record. Therefore, the director should have issued a Form I-797 Request for Additional Evidence affording the petitioner the opportunity to present additional evidence in support of the petition. Nevertheless, the petitioner has now had an opportunity on appeal to provide any additional evidence it deemed necessary to show that the proffered position is a specialty occupation. After review of the evidence of record and the evidence submitted on appeal, it is concluded that the petitioner has failed to establish that any of the four factors 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. Therefore, in the interest of entering a more timely decision, the AAO will not remand this matter for issuance of a request for evidence.

Beyond the director's decision, it is noted that the record contains a Form G-28 Notice of Appearance of Attorney signed by an individual who is not authorized under 8 C.F.R. §§ 292.1 or 292.2 to represent the applicant in this matter. Therefore, this decision will be furnished to the petitioner only.

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 decision of the director will not be disturbed.

ORDER: The appeal is dismissed.