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Bureau of Citizenship and Immigration Services

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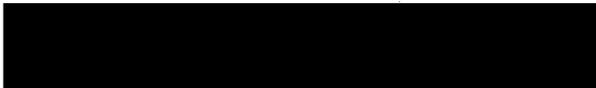
ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, DC 20536



JUL 02 2003

File: WAC 02 129 51474 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:



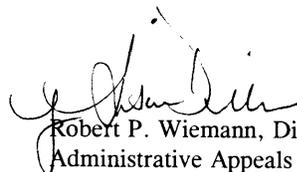
INSTRUCTIONS:

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 appeal will be dismissed.

The petitioner is a 99-bed skilled nursing convalescent hospital for the elderly and for children. It has 120 employees and a gross annual income of \$4,500,000. It seeks to temporarily employ the beneficiary as an associate administrator for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation or that the beneficiary was qualified to perform the duties of the proffered position.

On appeal, counsel asserts that the Bureau erred in its analysis of the petition. Counsel states that the proffered position is similar to a health services manager which is a specialty occupation. Counsel also asserts that the beneficiary has the equivalent of a master's degree in nursing, and therefore the beneficiary is qualified to perform the duties of the proffered 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 first issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the initial petition received by the California Service Center on March 7, 2002, the petitioner described the duties of the proffered position as follows:

[The beneficiary] will interpret, analyze and implement quality standards for each of our clients, pursuant to our company's operations manual and existing contracts. He will assist in formulating solutions to complaints and based on suggestions from clients and patients. He will coordinate with our human resource department in developing standard policies.

[The beneficiary] will monitor each nurse to make sure each personnel has the requisite training, instruction or continuing education in accordance with the Board of Nursing and comply with each client's quality standards. He will review nurse's [sic] performance before renewing their contracts.

[The beneficiary] will implement an effective communication/information system between the client, nurses and personnel department to monitor, avoid and eventually eliminate tardiness, absenteeism and truancy among the staff, which to date are predominant complaints from our clients.

The petitioner also stated the following:

We feel that [the beneficiary] is a necessity to our facility because as our associate administrator, he will assure high quality, efficient, appropriate and medically necessary continuum of care, in the most overall effective setting for our patients who have complex care requirements for high intensity, intermediate or long term delivery of services.

On March 8, 2002, the director asked the petitioner for further information to establish that the proffered position was a specialty occupation as outlined in 8 C.F.R. § 214.2 (h) (4) (iii) (A). In particular, the director requested a breakout of the percentage of time to be spent on each duty outlined in the initial petition, the level of responsibility for these duties, the hours per week of work, and the types of employees supervised. With regard to the beneficiary's qualifications, the director requested more information as to how the beneficiary met the criteria of 8 C.F.R. § 214.2 (h) (4) (iii) (C).

The petitioner provided the following breakdown of the beneficiary's duties and percentage of time devoted to the respective duties:

1. Will interpret and implement quality assurance standards to ensure quality care to each patient. 10%
2. Will review quality assurance standards, study existing policies and procedures and evaluate the effectiveness of quality assurance program. 5%
3. Will write quality assurance policies and procedures. 5%
4. Will review and evaluate patient's medical records- patient evaluation, nurses notes, home health aide notes, therapist notes [,] and social workers notes for completeness and conformance to the facilities [sic] policies. 10%
5. Will work with nursing supervisor in formulating the patient's treatment plan according to the physicians [sic] directions. 5%
6. Will formulate the curricular program for the staff in service. 5%
7. Will conduct in-service lectures to the staff with regards to improving and implementing quality assurance programs to improve the services rendered to the patients. 10%
8. Select specific topics for review, such as problem procedures, drugs, high volume cases, high risk cases, or other factors. 10%
9. Compile statistical data and write narrative reports summarizing quality assurance findings. 10%
10. Will apply utilization review criteria and review patients [sic] records and personnel engaged in quality assurance review of medical records. 20%

11. Will review the work product of resident nurses (LVN, CAN) and other personnel. 10%

The petitioner also stated:

The bulk of responsibility for an associate administrator is the reviewing of medical records followed by reviewing specific topics such as procedural problems, drugs, high volume cases, high risk cases, or other factors. The above-mentioned job duties will take up an equal amount of the remainder of the associate administrator's time spent on the job, normally 40 hours per week.

The petitioner described the duties of the position as beyond the duties of a health services manager. The petitioner stated that both the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)*, and *Occupational Outlook Handbook (Handbook)* indicate that administrator positions throughout the nursing industry commonly require, as a minimum, a baccalaureate degree for job entry. In addition, the petitioner stated that the duties of the associate administrator position were specialized and complex enough to fulfill the fourth criterion of 8 C.F.R. § 214.2 (h) (4) (iii) (A).

On May 8, 2002, the director denied the petition. The director stated that the duties of the proffered position were consistent with that of a registered nurse, and as such the position was not a specialty occupation. The director also stated that the expanded job description submitted by the petitioner in its response to the director's request for further evidence paraphrased the *DOT* description of a quality assurance coordinator position. The director also noted that the beneficiary did not have any education, training or experience in business administration that would qualify him to perform the duties of a health service manager.

On appeal, counsel asserts that the Bureau erred in its conclusion that the proffered position was that of a registered nurse. Counsel states that the duties of the proffered position and those of a registered nurse or head nurse are distinct in nature and focus. With particular regard to the instant petition, the beneficiary will have no direct contact with patients and he will not supervise nurses during their performance of nursing duties. According to counsel, the beneficiary will work with the quality procedures and standards of the medical facility. Finally counsel submits the text of the *Handbook* classification of medical and health services manager.

With regard to whether the degree requirement is common to the industry in parallel positions among similar organizations, counsel submits four Internet job advertisements. Counsel asserts that although the job advertisements were posted by some of the largest

medical facilities in the country, the duties described are still equivalent to the duties to be performed by the beneficiary.

With regard to the Bureau's determination that the beneficiary did not appear qualified for the position due to lack of experience in business administration, counsel points out that the educational qualifications for a health services manager as outlined in the *Handbook* are not limited to a degree in business administration. Counsel asserts that the educational equivalency document previously submitted is sufficient to establish the beneficiary's ability to perform the duties of the proffered position.

Upon review of the record, the petitioner has not articulated a basis for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)

The Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

A review of the record reveals that the director requested additional evidence because there was insufficient evidence that the proffered position was a specialty occupation. In response, the petitioner submitted an expanded job description with new duties. The position as initially described appeared to focus on the overall quality of patient care within the petitioner's facility, with emphasis on a predominant problem of absenteeism and truancy of employees. The expanded description of the job does not mention the truancy problem but rather focuses on the application of "utilization review criteria," working with nursing supervisors to formulate patients' treatment plans, conducting in-service lectures to the staff, compiling statistical data and narrative reports, and reviewing medical records and the personnel reviewing the same records.

Bureau regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). Any facts that come into being subsequent to the filing of a petition cannot be considered when determining whether the proffered position is a specialty occupation. See *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When

responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position that was offered to the beneficiary at the time the petition was filed merits classification as a specialty occupation. *Matter of Michelin Tire Corporation, supra*. If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. In the instant petition, although the petitioner did not change the job title of the proffered position, it appears to have amplified the duties of the proffered position significantly beyond the original job responsibilities. According to the second description, the beneficiary will be delivering lectures, compiling statistical data and narrative reports, as well as applying utilization review criteria. For this reason, the analysis of the first criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A) will be based on the job description of associate administrator originally submitted with the original petition.

Upon review of the record, the proffered position appears to be a healthcare position that utilizes knowledge gained through nursing, to administer various quality assurance reviews of work products and procedures. The position involves no direct nursing care of patients. Although the director determined that the proffered position was that of a registered nurse, based on the lack of direct nursing skills and administrative duties, the position can also be seen to have elements of an administrative position. For purposes of this proceeding, both *Handbook* classifications of nurses and of medical and health administrators will be examined.

With regard to registered nurses and further applications of their skills in quality assurance in non-hospital healthcare settings, on page 269, the *Handbook* states:

Some nurses move into the business side of healthcare. Their nursing expertise and experience on a healthcare team equip them to manage ambulatory, acute, home health, and chronic care services. Healthcare corporations employ nurses for health planning and development, marketing, and quality assurance.

The Department of Labor's *Occupational Outlook Handbook*, (*Handbook*) 2002-2003 Edition, on page 269 states the following for the training, or other qualifications for the registered nurse job classification:

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.

With regard to medical and health services managers, on page 75 -
76, the *Handbook* outlines the duties of this classification as
follows:

The term "medical and health services manager"
encompasses all individuals who plan, direct,
coordinate, and supervise the delivery of health care.
Medical and health services managers include specialists
and generalists. Specialists are in charge of specific
clinical departments or services, while generalists
manage or help to manage an entire facility or system.

Large facilities usually have several assistant
administrators to aid the top administrator and to
handle daily decisions. They may direct activities in
clinical areas such as nursing, surgery, therapy,
medical records, or health information. . . .

In smaller facilities, top administrators handle more
of the details of daily operations. For example, many
nursing home administrators manage personnel, finance,
facility operations, and admissions, and have a larger
role in resident care.

With regard to educational or training requirements, the *Handbook*
states the following:

Medical and health services managers must be familiar
with management principles and practices. A master's
degree in health services administration, long-term care
administration, health sciences, public health, public
administration, or business administration is the
standard credential for most generalist positions in
this field. However, a bachelor's degree is adequate
for some entry-level positions in smaller facilities and
at the departmental level within healthcare
organizations.

When comparing the initial job description with the *Handbook* classifications, the proffered position does not appear to be analogous to the health services manager position. For example, the record does not indicate that the petitioner presently has a quality assurance department with personnel who review medical records. In addition the record does not indicate that the beneficiary will be managing any specific facility or department within the petitioner's healthcare business. In the alternative, the record also does not indicate that the beneficiary will be an administrator in a small healthcare facility, managing several functions such as finances, or personnel. The sole area of focus in the instant petition appears to be quality assurance of patient care.

The position as described appears to be more analogous to a registered nurse position beyond entry level who is employed as a quality assurance employee than to a health services manager position. To the extent that a two-year associate's degree in nursing is sufficient to perform the duties of a registered nurse, it does not appear that a bachelor of science degree in nursing is the minimum requirement for entry into the actual position in the instant petition. Accordingly, the *Handbook* does not support a finding that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for an entry level nursing position.

With regard to other nursing positions beyond entry level that may be analogous to the position in the instant petition, on November 27, 2002, the Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Service, (Bureau) issued a policy memorandum on H-1B nurse petitions (nurse memo)¹. This memo provides the following commentary on administrative nursing positions: "Nursing Services Administrators are generally supervisory level nurses who hold an RN, and a graduate degree in nursing or health administration. (See Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook* at 75.)" The *Handbook* reference is to the classification of medical and health services managers that has been examined already in this proceeding. Accordingly, both the administrative nursing positions and the health services managers appear to require the same educational credentials, namely, a graduate degree in nursing, health administration, and other closely related fields.

In the instant petition, the record does not contain sufficient evidence that the proffered position is an administrative nurse position. For example, the record does not indicate that the proffered position involves any supervisory nursing responsibilities. Without more persuasive evidence, the

¹ Memorandum from Johnny N. Williams, Executive Associate Commissioner, INS 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).

petitioner has not established that the proffered position is that of a health services manager or administrator, or that the actual position requires a bachelor's degree for entry into the position. To the extent that the position appears analogous to a nursing position beyond entry level but distinct from an administrative nursing position, the petitioner has not established that the position requires a baccalaureate degree for entry into the position.

II. 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 - 8 C.F.R. § 214.1(h)(4)(iii)(A)(2)

A. Degree Requirement is Common to the Industry

Factors often considered by the Bureau when determining the industry standard include: whether the Department of Labor's (DOL) *Occupation Outlook Handbook* (*Handbook*) reports that the industry requires a degree, whether the industry's professional association has made a degree a minimum entry requirement, and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for a registered nurse position were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner submitted four Internet job announcements. None of these advertisements was found to be for parallel positions in similar businesses. For example, the first advertisement was for a manager of an interdisciplinary senior center that provides services in private homes, in day health centers and in contracted institutions; the second advertisement was for a quality improvement manager within a health service corporation that focused on "network access, credentialing and member service areas;" the third was for a manager of a pediatric clinic who monitored budgets and financial performance as well as resolved human resource and labor relations problems; and the fourth was for a medical office manager in an outpatient psychiatric clinical operation who had responsibilities for accounts billing, among other duties. None had a primary job duty that entailed quality assurance of patient care for a skilled care nursing facility.

In addition, the petitioner submitted no documentation that any professional association has made a bachelor's degree a requirement for entry into the quality assurance field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not

established that the degree requirement is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. As previously noted, this proceeding considers only the initial job description submitted by the petitioner. In the instant petition, the petitioner has submitted no documentation that the actual position described by the petitioner would involve duties seen as either unique or complex that only an individual with a degree in a specific specialty could perform them. For example, while the described duties of quality assurance may be an integral part of healthcare operations and patient care, the record does not contain any substantive evidence as to why these duties should be viewed as either complex or unique.

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h) (4) (iii) (A) (3)

The proffered position in the instant petition appears to be a new position within the petitioner's skilled care facility. The petitioner did not provide any evidence that it had hired anyone previously for the proffered position.

IV. The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree - 8 C.F.R. § 214.2(h) (4) (iii) (A) (4)

The job description in the original petition contained work duties that are similar to numerous other job and management areas, namely the monitoring of truancy and absenteeism within the workplace, and the quality assurance monitoring of work products and processes. Although the petitioner asserted in its response to the director's request for further evidence that the proffered position was specialized and complex due to the changing nature of health care, it provided no substantive evidence to support this assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without more persuasive evidence as to the specialized or complex nature of the proffered position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2 (h) (4) (iii) (A).

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 proffered position is a specialty occupation within the meaning of the regulations.

The second issue in this proceeding is whether the beneficiary is qualified to perform the duties of the proffered position. 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.

With regard to judging whether practical experience or specialized training is equivalent to the completion of a baccalaureate or higher degree, 8 C.F.R. § 214.2(h)(4)(iii)(D) states:

. . . equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- 1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association of society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Bureau that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

(ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

(iv) Licensure or registration to practice the specialty occupation in a foreign country; or

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record as presently constituted does not contain an evaluation of the beneficiary's employment experience from an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The petitioner submitted an educational equivalency document that evaluated both the beneficiary's four years of university studies and his 12 years of work experience. The evaluator reached the conclusion that the beneficiary had the equivalent of a U.S. master of science degree in nursing. While the credential evaluation service appears qualified to evaluate the equivalency of the beneficiary's baccalaureate degree in nursing to a U.S. baccalaureate degree in nursing, the record does not indicate that either the Foundation for International Services, Inc, or Megan A. Mittelstaedt, the individual evaluator of the beneficiary's academic documentation, has the authority to grant postgraduate college level credit for the beneficiary's work experience in the nursing field.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the Bureau can do its own assessment of the beneficiary's education and work experience with regard to their equivalency to a master's degree in nursing. It is noted that the beneficiary has worked in the nursing profession for 12 years. While the petitioner has established that the beneficiary has worked in the field for the requisite five years to have the equivalency of a master's degree, this evidence is not sufficient to establish that the beneficiary is qualified to perform the proffered position. The petitioner also has to establish that the beneficiary's documentation meets one of the criterion identified in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i), (ii), (iii), (iv) and (v).

For example, the record contains no evidence that the beneficiary has worked with peers, supervisors, or subordinates who had a

degree or its equivalent in health services management or nursing administration, or that the beneficiary has any experience or recognition of expertise in the health services management or administrative nursing field. Without more persuasive evidence, the petitioner has not established that the beneficiary's education and work experience are the equivalent of a master of science degree in nursing. Accordingly the petitioner has not established that the beneficiary is qualified to perform the duties of the position.

To the extent that the petitioner has not established that the actual position in the instant petition is a specialty occupation or that the beneficiary is qualified to perform the duties of the proffered position, the petition can not be approved.

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.