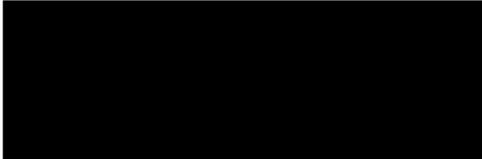


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



JUN 12 2003

File: WAC-01-063-52373 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:

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

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further consideration.

The petitioner is a home healthcare services business with 58 employees and a gross annual income of \$2 million. It seeks to employ the beneficiary as a rehabilitation services 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, 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 a baccalaureate degree is required for the proffered position, which the director determined is a health service manager. On appeal, counsel states, in part, that the proposed duties, which include planning, administering, and directing the operation of all health rehabilitation programs, are so complex that a baccalaureate degree in physical or occupational therapy is required. Counsel further states that the AAO recognizes that a health service manager is a specialty occupation.

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

In the position of Rehabilitation Services Coordinator and [sic] A Plus, [the beneficiary] will plan, administer, and direct the operation of all health rehabilitation programs, such as physical, occupational, recreational, and speech therapies. He will consult with medical and professional staff of other departments and personnel from associated health care fields to plan and coordinate joint patient and management objectives. [The beneficiary] will conduct staff conferences and plan training programs to maintain proficiency of staff in therapy techniques and use of new methods and equipment to meet patients' needs. He will allocate personnel on basis of work load, space, and equipment available. [The beneficiary] will analyze operating costs and prepare department budget. He will recommend patient fees for therapy based on use of equipment and therapy staff. [The beneficiary] will abstract data from records and maintain statistics. He will determine patient review dates according to established diagnostic criteria. He will compare in-patient medical records to established criteria, and confer with medical and nursing personnel and other professional staff to determine legitimacy of treatment. [The beneficiary] will also assist A Plus's owner and Review Committee in planning and holding federally mandated quality assurance reviews.

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 proffered position is similar to that of a medical and health service manager. In its *Occupational Outlook Handbook*, 2002-2003 edition, at page 75, the Department of Labor finds that the most significant source of training for medical and health service managers is a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration, or a bachelor's degree for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

The director has not determined whether the beneficiary qualifies to perform services in a specialty occupation. It is noted that the beneficiary holds a bachelor's degree in physical therapy. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he 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 him 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 AAO for review.