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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

[Redacted]

File: LIN 01 203 55900

Office: NEBRASKA SERVICE CENTER

Date: JUN 18 2003

IN RE: Petitioner:
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:

[Redacted]

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, Nebraska Service Center, and is now before the Administrative Appeals Office ("AAO") on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a business that provides home health care to the elderly. It has 25 employees and a gross annual income of \$950,000. The petitioner seeks to employ the beneficiary as its operations manager for a period of three years. The director denied the petition finding that the petitioner had failed to show that the proffered position is a specialty occupation or that the beneficiary qualifies to perform services in the proffered position.

On appeal, counsel 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.

On appeal, counsel asserts that the Bureau erred in finding that the proffered position does not qualify as a specialty occupation. Counsel states that the position requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree in a specific specialty or its equivalent as a minimum for entry into the occupation.

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

- (1) formulating and implementing appropriate policies in providing home care services;
- (2) conferring with non-profit organizations about appropriate care required by their referrals;
- (3) train[ing], and supervising care-givers to carry out care plan based on policies set by the company.

In response to a Bureau request for additional evidence, the petitioner provided the following, expanded description of the job's duties:

1. Formulate and implement appropriate policies in providing home care services for the elderly. Perform regular evaluation of care management services.

Coordinate with patients' families to elicit concerns and address complaints.

Prepare regular reports regarding the status of care needed by and prescribed for patients.
2. Train and supervise caregivers to carry out care plan based on policies set by the company.

Interview, hire and train new personnel.

Plan, assign, and direct the work of caregivers.

Conduct staff conferences and plan training programs to maintain proficiency of staff in caring techniques.

3. Coordinate with referring agencies regarding appropriate care required.

Gather information regarding a patient's physical condition, daily living activities, and safety of the home setting prior to provision of care plan.

Report and discuss client evaluation to [sic] referring agencies.

Secure for [sic] all resources and equipment needed in caring for the patient.

Develop referral source and integrate home care services with medical, nursing and other health professionals.

4. Coordinate fiscal and budgeting matters with the owner and administrative staff to ensure proper funding of operations.

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.

In these proceedings, the duties of a position are dispositive and not the job title. In this case, the duties of the position appear to be those of a health services manager. The Department of Labor ("DOL") describes the duties of health services managers at pages 75 of the *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, as follows:

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

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Clinical managers have more specific responsibilities than generalists, and have training or experience in a specific clinical area. . . . These managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

In this case, the beneficiary will formulate and implement policies in providing home care services; confer with non-profit organizations about appropriate care required by their referrals; train and supervise care-givers to carry out patient care plans based on the policies set by the company; and coordinate fiscal and budgeting matters with the owner and administrative staff to ensure proper funding of operations. These are clearly the duties normally performed by health services managers. In view of the foregoing, it is concluded the petitioner has shown that the proffered position is a specialty occupation.

The director also found that the petitioner had not shown that the beneficiary's education, training, and experience qualify her to perform services in the field of health services management.

On appeal, counsel asserts that the beneficiary's university coursework and work experience qualify her to perform the duties of the position in question.

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 record shows that the beneficiary was awarded a Bachelor of Science degree in Pharmacy from the University of Santo Tomas in the Philippines in 1992. She subsequently received a Doctor of Medicine and Surgery degree from the same university in 1998. A credentials evaluator found the beneficiary's foreign education equivalent to a Doctor of Medicine degree from a regionally accredited institution in the United States. The beneficiary is

also a member of the Philippine Medical Association. The petitioner submitted evidence that the beneficiary has supervisory and administrative experience.

According to the *Handbook* at page 75, 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. For clinical department heads, a degree in the appropriate field and work experience may be sufficient for entry. In this case, the beneficiary holds a bachelor's degree in pharmacy and a doctor of medicine degree and has completed medical internship and residency in the Philippines. She also has supervisory and administrative experience. Therefore, it is concluded that the beneficiary qualifies to perform the duties of a health services manager in the setting of a home health care agency.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.