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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: SRC 02 108 55040

Office: TEXAS 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]

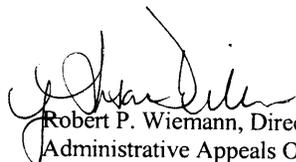
**INSTRUCTIONS:**

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, Director  
Administrative Appeals Office

**Discussion:** The petition was denied by the Director of the Texas Service Center and is now before the Administrative Appeals Office ("AAO") on appeal. The appeal will be dismissed.

The petitioner is a general hospital with 722 employees and a gross annual income of \$165,620,150. It seeks to employ the beneficiary as a registered nurse/head nurse for a period of three years. The director determined the petitioner had not shown that the proffered position is a specialty occupation.

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.

The director determined that the petitioner had not shown that a Bachelor of Science degree in Nursing ("BSN") is normally the minimum requirement for entry into the occupation.

On appeal, counsel asserts that the degree requirement is an industry standard and that the petitioner requires a BSN degree for the position in question. Counsel further asserts that the

position is an administrative position and as such requires at least a BSN degree.

In a letter that accompanied the initial I-129 petition filing, the petitioner described the duties of the offered position as follows:

Supervises and coordinates nursing activities in the facility. Assigns duties and coordinates nursing service. Evaluates nursing activities to ensure patient care, staff relations, and efficiency of service. Observes nursing care and visit[s] patients to ensure that nursing care is carried out as directed, and treatment [is] administered in accordance with physician's instructions. Directs preparation and maintenance of patients' clinical records. Inspects rooms and wards for cleanliness and comfort. Accompanies physician on rounds, and keeps informed of special orders concerning patients. Participates in orientation and training of personnel. Orders or directs ordering of drugs, solutions, and equipment, and maintains records on narcotics. Investigates and resolves complaints, or refers unusual problems to superior.

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.

The duties of the position are those of a head nurse in a hospital setting. The Department of Labor ("DOL") describes the responsibilities of a head nurse at pages 268-270 of the *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.

On November 27, 2002, the Service (now 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.<sup>1</sup> However, the mere fact that a nursing position has a title such as "registered nurse/head nurse" does not necessarily mean that it qualifies as a specialty occupation.<sup>2</sup> A review of the *Handbook* at pages 269-270 finds no requirement of a baccalaureate or higher degree *in a specific specialty* for

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<sup>1</sup> 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.)

<sup>2</sup> 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.

employment as a head nurse. The three educational paths to nursing are as follows: Associate degree in nursing (A.D.N.), bachelor of science degree in nursing (B.S.N.), and diploma. The *Handbook* further states that:

There have been attempts to raise the educational requirements for an R.N. license to a bachelor's degree and, possibly, create new job titles. These changes, should they occur, will probably be made State by State, through legislation or regulation...In fact, many career paths are open only to nurses with bachelor's or advanced degrees. A bachelor's degree is usually necessary for administrative positions and is a prerequisite for admission to graduate nursing programs in research, consulting, teaching, or a clinical specialization.

Counsel asserts that the proffered position is an administrative position and as such requires the services of an individual with a BSN degree. The *Handbook* does not elaborate on administrative nursing positions within this classification. The nurse 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. Department of Labor, *Occupational Outlook Handbook* at page 75.)" <sup>3</sup> The *Handbook* reference applies to the classification of medical and health services managers rather than that of head nurse or nurse supervisor. The *Handbook* describes the work of medical and health services managers at page 75 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 or help to manage an entire facility or system.

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<sup>3</sup> *Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses*, HQISD 70/6.2.8-P (November 27, 2002), *supra*.

While the duties of the proffered position are clearly more complex than those of an entry-level registered nurse, the evidence of record does not support a conclusion that the job is an administrative or medical and health services management position. Although the petitioner states that the beneficiary's duties include the supervision and coordination of nursing activities, this phrase does not provide any insight into the specific tasks the beneficiary would be expected to perform. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a BSN is normally the minimum requirement for employment as a head nurse/registered nurse in a hospital setting.

Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's *Dictionary of Occupational Titles* (DOT) (4th Ed., Rev. 1991). However, the DOT is not considered to be a persuasive source of information regarding whether a particular job 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.

The DOL has replaced the DOT with the *Occupational Information Network* (O\*Net). Both the DOT and O\*Net provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the DOT. Thus, the petitioner has not shown that a BSN degree is normally the minimum requirement for entry into the occupation.

Counsel asserts that the petitioner requires a BSN degree for the position in question. In support of his assertion, counsel submits a list of nine individuals who hold "management positions" at Doctors Hospital Tidwell+Parkway. According to this list, all of the individuals named hold a BSN degree, and one, [REDACTED], holds a master's degree in nursing. Ms. [REDACTED] position cannot be considered parallel to the proffered position, however, as she is the Chief Nursing

Executive at Doctors Hospital. That position is an administrative position that normally requires a master's degree in nursing. Moreover, counsel has not provided the exact job title held by the individuals listed, nor has counsel provided any independent evidence which would tend to corroborate the claim that these individuals hold such a degree. Therefore, the petitioner has failed to establish that it has, in the past, required the services of individuals with a BSN or higher degree for the offered position.

In an attempt to demonstrate that the degree requirement is an industry standard, the petitioner submitted photocopies of eight Internet job advertisements for head nurse positions. However, three of these advertisements indicate that a BSN degree is preferred rather than required. One advertisement cannot be considered to be parallel to the proffered position because that job requires a master's degree in psychiatric nursing. Although the remaining positions require a BSN degree, the advertisements do not contain sufficient information to determine whether the responsibilities and number of staff to be supervised in those jobs parallel those of this position. Therefore, these job listings cannot be considered as sufficient to demonstrate the existence of an industry standard requiring a baccalaureate or higher degree for employment as a head nurse.

Finally, the petitioner has not shown that the duties of the position are 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 *Handbook* specifically notes that a head nurse's duties include both supervisory and management functions such as planning work schedules, assigning duties, providing training programs, maintaining records, and ordering supplies and equipment. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a bachelor's degree in a specific specialty is the minimum requirement for employment as a head nurse/registered nurse.

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.

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.

**ORDER:** The appeal is dismissed.

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