

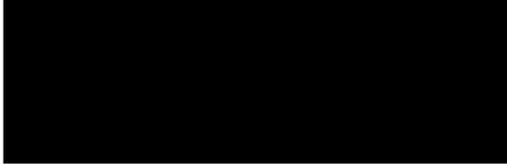


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: LIN-01-251-53593 Office: Nebraska Service Center

Date: MAR 13 2003

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)

PUBLIC COPY

ON BEHALF OF PETITIONER:



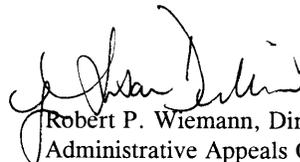
INSTRUCTIONS:

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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a home health care business with 35 employees and a gross annual income of \$1,500,000. It seeks to employ the beneficiary as a social service case manager 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), the term "specialty occupation" is defined 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 denied the petition because the petitioner had not demonstrated that a baccalaureate degree in a specific specialty is required for the proffered position. On appeal, counsel states, in part, that the proffered position is a specialty occupation as it requires a degree in a field related to human services.

Counsel's statement on appeal is not persuasive. The Bureau does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- (1) Coordination with interdisciplinary care providers in formulating and implementing client goal development plans using individual, group, and family modalities;
- (2) Acts as liaison between clients, their families, guardians, referral sources, and other individual involved in the treatment to keep them informed of clients' needs, goals, and treatment progress on a timely basis;

(3) Assist clients in seeking or requiring clinical and social services provided by health centers and other community agencies; and

(4) Maintain accurate documentation of services performed and progress report for each client.

In addition, in a letter dated February 18, 2002, counsel states, in part, as follows:

The situation here is almost similar to the working relationship between a lawyer and a paralegal. The paralegal may do some of the tasks that a lawyer would do, such as being involved in legal research or coordinating with clients and government agencies.

The duties of the position offered is not exactly the same as that of a social workers [sic] requiring a license because **the Social Service Case Manager will just serve as a conduit between the patient, their families and service and healthcare providers.** The duties of a Social Service Case Manager are different from those of a social worker and an occupational therapist. Therefore, the proffered position does not require a license. (Emphasis in original).

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.

First, the Bureau agrees with counsel's determination that the proffered position is not that of a social worker or an occupational therapist. The Bureau, however, does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in a human services related field. The proffered position appears to be primarily that of a social and human service assistant. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 158, the Department of Labor (DOL) describes the job of a social and human service assistant as follows:

Social and human service assistant is a generic term for people with various job titles, including human service worker, case management aide, social work assistant, community support worker, mental health aide, community outreach worker, life skill counselor, or gerontology aide. They usually work under the direction of professionals from a variety of fields, such as nursing, psychiatry, psychology, rehabilitative or physical therapy, or social work. The amount of responsibility and supervision they are given varies a great deal. Some have little direct supervision; others work under close direction.

Social and human service assistants provide direct and indirect client services. They assess clients' needs, establish their eligibility for benefits and services, and help clients obtain them. They examine financial documents such as rent receipts and tax returns to determine whether the client is eligible for Food Stamps, Medicaid, welfare, and other human service programs. They also arrange for transportation and escorts, if necessary, and provide emotional support. Social and human service assistants monitor and keep case records on clients and report progress to supervisors and case managers. They also may transport or accompany clients to group meal sites, adult daycare centers, and doctors' offices; telephone or visit clients' homes to make sure services are being received; or help solve disagreements, such as those between tenants and landlords. They also may help some clients complete insurance or medical forms, as well as applications for financial assistance, and may assist others with daily living needs.

Social and human service assistants play a variety of roles in a community. They may organize and lead group activities, assist clients in need of counseling or crisis intervention, or administer a food bank or emergency fuel program. In halfway houses, group homes, and government-supported housing programs, they assist adults who need supervision with personal hygiene and

daily living skills. They review clients' records, ensure that they take correct doses of medication, talk with family members, and confer with medical personnel and other caregivers to gain better insight into clients' backgrounds and needs. Social and human service assistants also provide emotional support and help clients become involved in their own well-being, in community recreation programs, and in other activities.

In psychiatric hospitals, rehabilitation programs, and outpatient clinics, social and human service assistants work with professional care providers, such as psychiatrist, psychologists, and social workers, to help clients master everyday living skills, to teach them how to communicate more effectively, and to get along better with others. They support the client's participation in a treatment plan, such as individual or group counseling or occupational therapy.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a social and human service assistant position. For example, the petitioner states that the beneficiary will be responsible for "[acting] as liaison between clients, their families, guardians, referral sources, and other individuals involved in the treatment to keep them informed of clients' needs, goals, and treatment process on a timely basis" and "[assisting] clients in seeking or requiring clinical and social services provided by health centers and other community agencies..." Such duties are normally associated with a social and human service assistant position. A review of the *Handbook* at page 159 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a social and human service assistant. Employers increasingly seek individuals with relevant work experience or education beyond high school. Certificates or associate degrees in subjects such as social work, gerontology, human services, or one of the social or behavioral sciences meet most employers' requirements. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as psychology, for the offered position. Third, although the record contains various job advertisements, the positions advertised are for social workers, or an equivalent thereof, rather than social and human service assistants. As such, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed

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.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.