

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

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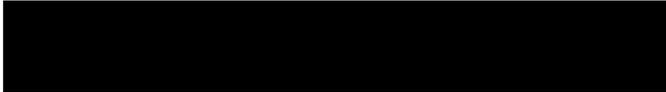
ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: SRC-01-211-52696 Office: Texas Service Center Date:

MAR 19 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:



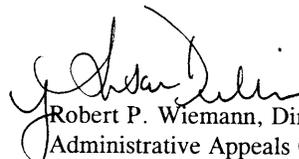
INSTRUCTIONS:

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 nursing home with an undisclosed number of employees and an undisclosed gross annual income. It seeks to employ the beneficiary as a quality assurance 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.

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 the proffered position requires a baccalaureate degree. On appeal, counsel states, in part, that the petitioner submitted evidence that a similar business requires a baccalaureate degree for a quality assurance coordinator position.

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:

- \* Management of day to day office operations to ensure operational quality at all levels.
- \* Perform medical record review identifying potential quality issues and opportunities for improvement in geriatric patient care and services.
- \* Review and evaluate geriatric patient's medical records applying quality assurance criteria.

\* Coordinate and conduct initial, concurrent, and retrospective medical record reviews. Also perform medical reviews for inpatient medical necessity, appropriation of care, level of care and quality of care for hospitalizes [sic] geriatric residents.

\* Analyze quality management information; produce reports accurately reflecting patterns and trends in the management of geriatric patient care and services.

\* Assist in the development of Quality Management programs for assigned medical, nursing staff and ancillary services.

\* Monitor compliance with contract, federal and state quality assurance requirements.

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 does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in nursing or a related field. The proffered position appears to be that of a registered nurse. The Bureau often looks to the Department of Labor's *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.

In the 2002-2003 edition of the *Handbook* at page 269, the *Handbook* states the following about the training and educational requirements for registered nurse positions:

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... some 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.

The *Handbook* does not elaborate on administrative nursing positions within this classification, although reference is made to two nursing positions within the classification of registered nurse that appear analogous to the proffered position. The *Handbook* states the following about head nurses or nurse supervisors:

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.

The proffered position appears to resemble a nursing position beyond the entry level registered nurse, but it does not appear to be analogous to an administrative nursing position. A recent Bureau policy 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, *Handbook* at 75.)" <sup>1</sup> The *Handbook* reference is to the classification of medical and health services managers. On page 75, the *Handbook* states:

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INS Office of Field Operations. Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses, Memorandum to Regional Directors, Service Center Directors, Director, Administrative Appeals Office, Deputy Executive Associate Commissioner, Immigration Services Division (Washington, DC: 27 November 2002), 4 p.

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..

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.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a registered nurse/nurse supervisor position rather than a health services manager position. For example, the petitioner states that the beneficiary will be responsible for "[m]anagement of day to day office operations to ensure operational quality at all levels" and "[assisting] in the development of Quality Management programs for assigned medical, nursing staff and ancillary services..." Such duties fall within the administrative and supervisory tasks associated with a registered nurse, as described above. 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 nursing, for the offered position. Third, although the record contains two job advertisements, neither of the advertisements is persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. The first advertisement does not require a baccalaureate degree in a specific specialty as a minimum requirement for entry into the occupation; a BSN in nursing is preferred rather than required. While the second job advertisement for a quality assurance coordinator in the Human Services Department of Broward County does require a baccalaureate degree in a specific specialty, the petitioner has not demonstrated that the nature of the proffered position is as specialized and complex as the advertised position. 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.

**ORDER:** The appeal is dismissed.