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

ADMINISTRATIVE APPEALS OFFICE
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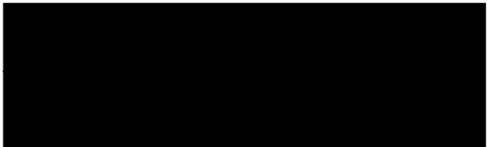
File: EAC-02-072-52813 Office: Vermont Service Center Date:

MAR 19 2003

IN RE: Petitioner: [Redacted]
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:



**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.

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 hospital with 150 employees and a gross annual income of \$10,000,000. It seeks to employ the beneficiary as a specialty nurse 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.

The term "specialty occupation" is 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 denied the petition because the duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. On appeal, counsel states, in part, that the proffered position is similar to that of a health service manager. Counsel further states that the proffered duties are so complex as to require a baccalaureate degree.

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). She will serve in a senior nursing level capacity in charge of coordinating total nursing care for patients in our facility. She shall provide leadership and oversee the efficiency and coordination between and among the ancillary nursing staff and patient team personnel to maintain standards for professional nursing practice in a clinical setting.

2). She shall serve as District Leader in her assigned unit. In this capacity, she shall assist with the orientation of staff, serve as a preceptor and evaluate newly hired personnel. She shall also assist in development review and revision of all policies and procedures for the unit.

3). She will be responsible for exercising professional clinical judgment to modify nursing care plans as needed. She will also administer medications, implementing doctors' orders, demonstrate the ability to provide individualized nursing care to patients as well as accurately administer chemotherapy and multumen catheters, and

4). She will be tasked with utilizing prescribed nursing processes to provide direct patient care and the implementation of nursing procedures for quality care. She shall also perform physical/physio/social assessments on assigned patients, maintain appropriate documentation and formulate accurate individual patient care plans based on nursing assessments and standards of care.

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 beneficiary is a health services manager, an occupation that would normally require 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. (It is noted that the beneficiary holds a baccalaureate degree in nursing.)

In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 75, the Department of Labor (DOL) describes the job of a health services manager as follows:

The structure and financing of healthcare is changing rapidly. Future medical and health services managers must be prepared to deal with evolving integrated healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work, and an increased focus on preventive care . . . Increasingly, medical and health services managers will work in organizations in which they must optimize efficiency of a variety of interrelated services, for example, those ranging from inpatient care to outpatient follow-up care.

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 record reflects that the petitioner, which is a hospital, employs 150 persons and has a gross annual income of \$10 million. The proposed duties of a specialty nurse are not those of health service manager, as described above. For example, there is no evidence that the position offered includes complex health service managerial duties such as managing finance and facility operations.

The proffered position is that of a specialty nurse. On November 27, 2002, the Bureau issued a policy memorandum on H-1B nurse petitions (nurse memo) and 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.¹ However, the mere fact that a nursing

¹Williams, Johnny N. 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.

position has a title such as "specialty" does not necessarily mean that it qualifies as a specialty occupation.²

The Bureau looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. While the nurse memo specifically states that a petitioner may be able to demonstrate, through affidavits from independent experts or other means, that the nature of the position's duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree (or its equivalent), the Bureau maintains discretion to use as advisory opinions statements submitted as expert testimony. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The Service must be satisfied that the ultimate employment of the alien is in a specialty occupation, regardless of the position's title.

Here, although the proffered position has the title of "specialty nurse," the duties of the position do not entail any specialized or complex responsibilities that involve the theoretical and practical application of a body of highly specialized knowledge. As previously stated, the duties ascribed to the position, which include serving in a senior nursing level capacity in charge of coordinating total nursing care for patients, are routine to many registered nurse/supervisory nurse positions. Just because the beneficiary would perform leadership duties in addition to routine nurse duties does not elevate the duties' complexity. As the record is presently constituted, the Bureau cannot find that the job fits the criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proffered position appears to be primarily that of a registered nurse/supervisory nurse. In contrast to the description of a health services manager, in its *Handbook*, at page 268, the DOL describes the position of a registered nurse/supervisory nurse as follows:

... RNs also develop and manage nursing care plans ...

² It is worth noting that the nurse memo also mentions that certification examinations are available to such registered nurses who may work in such nursing specialties and possess additional clinical experience, but who are not advanced practice nurses.

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 proper delivery of care. They also may see that records are maintained and equipment and supplies are ordered.

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 "assist[ing] with the orientation of staff, serve as a preceptor and evaluate newly hired personnel" and "administer[ing] medications, implementing doctors' orders, demonstrate the ability to provide individualized nursing care to patients as well as accurately administer chemotherapy and multiumen catheters...." Such duties fall within the administrative and supervisory tasks associated with a registered nurse, as described above.

A review of the DOL's *Handbook* at page 269 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a registered 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:

. . . 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.

As the record does not demonstrate that the beneficiary's proffered position is an administrative position, or a graduate nursing program in research, consulting, teaching, or a clinical specialization, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations. 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 normally requires the services of individuals with baccalaureate or higher degrees in a specific specialty such as nursing, for the offered position. Third, 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.