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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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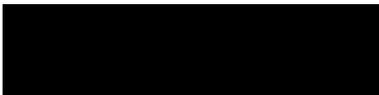
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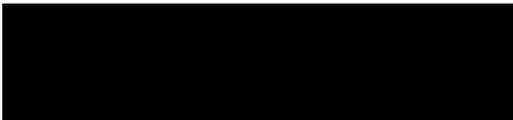
MAY 19 2003

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)

ON BEHALF OF PETITIONER:



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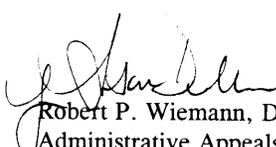
INSTRUCTIONS:

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, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Florida company that provides recruitment, placement, and consultation services for the health care field. It has fourteen employees and a projected gross annual income of \$4 million dollars. It seeks to temporarily employ the beneficiary as a critical care registered nurse for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the position of critical care registered nurse is a specialty occupation and submits further evidence for the record.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" 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 field 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.

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 issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation. In the initial I-129 petition filing received by the Texas Service Center on December 6, 2001, a letter signed by Ms. [REDACTED] administrator, Kendall Regional Medical Center, described the duties of the offered position as follows:

- Administration, coordination, and supervision of nursing activities and patient care in a critical care setting;
- Assisting physicians with procedures in the intensive care unit;
- Providing direct and indirect patient care in the critical care setting;
- Communicating with physicians about changes in patient's clinical condition, including hemodynamic monitoring, results of diagnostic studies and symptomatology;
- Responding quickly and accurately to changes in condition of patients or response to treatment by patients;
- Performing head-to-toe assessment on all patients and reassessment as required;
- Assessing and reassessing pain and pain management techniques;
- Educating patients and their families in pain management;
- Formulating an individualized plan of care, revising such plan as indicated by the patient's response to treatment and evaluating overall plan daily for effectiveness;
- Cardiac monitoring, identifying dysrhythmias and treating appropriately based upon Advanced Life Support Certification protocol;

- Caring for patients with compromised nutritional/metabolic status;
- Caring for patients requiring extensive fluid and electrolyte management;
- Communicating appropriately and clearly with physicians and coworkers;
- Consulting other departments as appropriate to provide for an interdisciplinary approach to the patient's needs.

The petitioner also submitted a document from the Commission on Graduates of Foreign Nursing Schools that indicated the beneficiary's bachelor of science degree from the All India Institute of Medical Sciences in nursing and midwifery qualified her to practice nursing and midwifery in India and was the equivalent of such registration in the United States.

In addition, the petitioner submitted the following materials for the record:

1. A letter from [REDACTED] Medical Director of the Intensive Care Unit at the University of Miami Jackson Memorial Hospital and Ryder Trauma Center, and Program Director of the Surgical Critical Care Fellowship Training Program. Dr. [REDACTED] states that Ryder Trauma Center currently employs 17 critical care nurses, all of whom held a bachelor of science degree in nursing or its equivalent on the date each was hired for employment with the Trauma Center. He also lists job requirements for critical care nurses.
2. A letter from [REDACTED] Dean of the University of Miami, School of Nursing, who stated that, in her opinion, the proffered position requires a bachelor of science degree in nursing.
3. A letter from [REDACTED] Director of the Surgical Intensive Care Unit at the Veterans Administration Medical Center, in Miami, Florida, who stated that "all of our Critical Care Nurses possess at least a bachelor's degree in Nursing or its equivalent - as would any reputable Critical Care Unit."
4. A copy of a curriculum from Broward Community College for an associate degree in nursing that noted 72 program hours were required to complete the course.
5. A copy of a curriculum from Florida International University for a bachelor of science in nursing degree that noted 123 program hours were required to complete the course.

6. A letter signed by [REDACTED] President of Job2Career.com that stated the recruitment company has never hired a nurse with less than a bachelor of science in nursing degree.
7. A copy of page 6-27 of the *H-1B Handbook* that makes reference to a previous decision taken by the Administrative Appeals Office which reversed a Service Center's decision to deny a team leader/nurse position.

On December 13, 2001, the director requested further evidence for the instant petition. In particular, she asked for explicit documentary evidence to establish that the proffered position required a registered nurse with a bachelor of science degree in nursing and that the petitioner had consistently required others in critical care nursing positions to hold at least a baccalaureate degree.

In response, the petitioner submitted an excerpt from the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* on registered nurses and stated that the *Handbook* excerpt referred to "standard run of the mill registered nurses" and not to a critical care registered nurse. Counsel stated that it is normal for hospitals to require a bachelor's degree or its equivalent for a critical care nurse position. Counsel also submitted letters from two United States congressmen that expressed support for group processing of similar critical care nurse petitions that involved approval at the Service Center level with subsequent certification to the AAO for review of legal issues.

On April 30, 2002, the director denied the petition. The director referenced the *Handbook* excerpt on the educational requirements for nurses and stated that "where a petitioner's own practice deviates from the norm, its demonstration of the validity of qualifying requirements must be exceedingly clear, so as to demonstrate why employment in this position warrants professional standing whereas most such similar employment does not." The director further noted that the petitioner did not submit evidence that the position required at the minimum, a baccalaureate degree, or that the employer had **consistently** required a minimum of a bachelor's degree in order to perform the duties of the position within its organization. (Emphasis in original.)

On May 30, 2002, counsel submitted an appeal and stated in his cover comments that the legal analysis of why the proffered position was a specialty occupation was contained in an attached brief for a parallel case, that of Sindhu Mathew. Counsel then requested an additional thirty days to submit a brief. In late June 2002, counsel submitted a similar brief from another parallel case, that of Princy Bhat. While the Bureau will accept the appeal filed in June, it should be noted that the medical facility

identified in the second brief does not correspond with the actual employer of the beneficiary in the instant petition.

On appeal, counsel resubmits letters from Drs. [REDACTED] and [REDACTED] and makes comments on their letters. Among new relevant materials placed on the record are the following:

An article from the *American Journal of Critical Care*, January 2001, Volume 10, No. 1, entitled "Assessment of Professional Development of Critical Care Nurses: A Descriptive Study." The article states that a survey of 100 critical care nurses found that 72% had at least a bachelor's degree and 38% had a master's or higher degree.

A copy of the section of the Department of Labor's (DOL), *Occupational Outlook Handbook (Handbook)*, 2000-2001 edition on registered nurse positions.

A letter from [REDACTED] President of Job2Career.com that provides I-797 approval notices for eleven H-1B visa petitions filed by Job2Career along with copies of beneficiaries' baccalaureate diplomas in nursing from various Indian universities' schools of nursing. It should be noted that the second brief contained an additional eight I-797 approval notices with accompanying university diplomas.

In his initial comments, counsel states that the director places too much reliance on the *Handbook* description of registered nurses, since this publication does not deal with the critical care nurse position, which requires a higher skill level. Counsel also states that the director ignored the petitioner's evidence that "in virtually all critical care nurse positions around the country, hospitals required a bachelor's degree in nursing or an associate's degree plus sufficient work experience to equal a bachelor's degree as a minimum for entry."

Other assertions stated in the brief include the following:

- The Administrative Appeals Office previously found that a team leader/registered nurse position was a specialty occupation in a previous AAO appeal. Counsel maintains that the critical care registered nurse specialty has developed professionally so much over time that it is now analogous to the team leader nurse position.
- The proffered position in the instant petition is distinguishable from the nursing positions examined in *Defensor v. Meissner* 201 F.3d 384 (5th Cir. 2000), in that Ms. Liz Tonkin, the hospital administrator, stated that the actual employer required a bachelor of science degree or its equivalent in terms of education and experience, and that all the employer's critical care nurses have satisfied this requirement.

Upon review of the record, the petitioner has not presented a persuasive argument for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 CFR § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)

The Bureau often looks to the Department of Labor's (DOL) *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.

The basic duties of registered nurses as outlined in the 2002-2003 edition of the *Handbook* on page 268 are as follows:

Registered nurses (RNs) work to promote health, prevent disease, and help patients cope with illness. . . . When providing direct patient care, they observe, assess, and record symptoms, reactions, and progress; assist physicians during treatments and examinations; administer medications; and assist in convalescence and rehabilitation. RNs also develop and manage nursing care plans; instruct patients and their families in proper care; and help individuals and groups take steps to improve or maintain their health . . . While State laws govern the tasks that RNs may perform, it is usually the work setting that determines their daily job duties.

On 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.

. . . .

. . . [S]ome 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.

To the extent that a two-year associate's degree in nursing is sufficient to perform the duties of an entry level registered nurse, it does not appear that a bachelor's of science in nursing is the minimum requirement for entry into the nursing field.

Accordingly, the *Handbook* does not support a finding that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for an entry level nursing position.

In the instant petition, the petitioner uses the title of critical care registered nurse. As noted by counsel, this precise title is not examined in the *Handbook*. However, such a nursing occupation is examined elsewhere. On November 27, 2002, the Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Service, (Bureau) issued a policy memorandum on H-1B nurse petitions (nurse memo).¹ On page two, the memo refers to certified advanced practice registered nurses (APRNs) and contrasts the educational requirements for APRNs with those of general registered nurse positions. The policy memo also acknowledges that an increasing number of nursing specialties, such as critical care and operation room care, require a higher degree of knowledge and skill than a typical RN or staff nurse position. The petitioner has not indicated that the proffered position at Kendall Regional Medical Center is for the Clinical Nurse Specialist in Critical Care specialty outlined in the nurse memo.

With regard to these non-APRN nurses working in specialty areas, the memo states that certification examinations are available to registered nurses who are not advanced practice nurses, but who may possess additional clinical experience. Critical care is mentioned as a category for certification examination. *Id* at 3. To date the petitioner has not indicated any need for additional certification in critical care for the proffered position. The record is not sufficient to establish that the proffered position would fall under the general guidance provided in the nurse memo with regard to positions employing non-APRN nurses that may be H-1B eligible. (See Section IIB below.)

II. 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 - 8 CFR § 214.1(h)(4)(iii)(A)(2)

A. Degree Requirement is Common to the Industry

Factors often considered by the Bureau when determining the industry standard include: whether the Department of Labor's (DOL) *Occupation Outlook Handbook* (*Handbook*) reports that the industry requires a degree, whether the industry's professional association has made a degree a minimum entry requirement, and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting

¹ 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.)

Hird/Blaker Corp. v. Slattery, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for a registered nurse position were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner submitted letters from experts in the critical care field in the Miami area, as well as an article from the *American Journal of Critical Care* that in part examined the educational credentials of a group of critical care nurses in the Florida, South Carolina, and North Carolina area.

On appeal, counsel states that the director ignored the petitioner's evidence that "in virtually all critical care nurse positions around the country, hospitals required a bachelor's degree in nursing or an associate's degree plus sufficient work experience to equal a bachelor's degree as a minimum for entry." Contrary to counsel's assertion, neither the correspondence from critical care experts in Miami nor the *Journal* article necessarily establishes a standard for hospital hiring practices throughout the United States. In addition, neither letter from the physicians involved in the actual practice or study of critical care contained any corroborative documentation to establish the educational credentials of their institutions' critical care nurses. Of more probative value for this particular criterion would have been the submission of diplomas or evidence to establish the type and length of work experience that was equivalent to a baccalaureate degree in nursing for non-degreed critical care nurses.

Finally, the petitioner submitted no documentation that any professional nursing association, such as the American Association for Critical Care Nursing, has made a bachelor's degree a requirement for entry into the field. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, the petitioner submitted a letter on Kendall Regional Medical Center letterhead signed by Ms. [REDACTED]. In addressing the complexity and uniqueness of the proffered position, the letter stated the following with regard to differences between medical/surgical nurses and critical care nurses:

[Kendall Medical Center] considers an individual working as a critical care nurse to be working in a specialty occupation due to the specialized and complex nature of the position. The position of critical care

nurse is materially different from that of a medical/surgical nurse. Some of the ways in which the two positions are different include:

- (1) The patients for which a critical care nurse is responsible are more acutely ill than patients cared for by a medical/surgical nurse;
- (2) [T]he critical care setting is a highly-charged environment due to the fact that most patients in this setting are in "life or death" situation;
- (3) [A] critical care nurse is required to have at least six weeks of classroom orientation in addition to the one and half days of classroom orientation required for a medical/surgical nurse;
- (4) [A] critical care nurse is required to have at least six weeks clinical orientation with an experienced critical care nurse as compared to two weeks of clinical orientation required for medical/surgical nurses;
- (5) [A] critical care nurse is required to obtain Advanced Cardiac Life Support (ACLS) in addition to a Basic Life Support (BLS), while a medical/surgical nurse is required to obtain a BLS;
- (6) [A] medical/surgical nurse is not required to titrate drips, monitor the hemodynamic status of patients, nor evaluate electrocardiographic rhythm strips, and
- (7) [A] medical/surgical nurse is not required to possess the in-depth knowledge of anatomy and physiology that a critical care nurse is required to possess.

The Bureau may, in its discretion, accept letters and advisory opinion statements as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Bureau is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988) In reviewing Ms. [REDACTED] letter, it should be noted that the text of this letter is identical in content and date (November 2, 2001) to another letter submitted by counsel in his second brief to support a petition in which the actual employer was West Side Regional Medical Center in Plantation, Florida. In the letter contained in the second brief, Ms. [REDACTED] was identified as administrator of West Side Regional Medical Center, while the identical letter originally submitted by the petitioner as a part of the instant petition identified her as the "administrator" of Kendall Regional Medical Center. These two documents represent conflicting evidence with regard to Ms. [REDACTED] employment, her knowledge of nursing practices at Kendall Regional Medical Center as well as her authority to speak on behalf of Kendall Medical Center. Thus, the Bureau will give no weight to either letter signed by Ms. [REDACTED].

In addition, even if the letter had been given more weight, it is unclear from the above statements whether more training is necessary due to the complexity of the procedures such as titrating drips, or rather due to the increased number of duties. Without more persuasive evidence, the petitioner has not established either the industry standard or that the position is so unique or complex that it can only be performed by a person with a baccalaureate degree.

III. The employer normally requires a degree or its equivalent for the position - 8 CFR § 214.2(h)(4)(iii)(A)(3)

With regard to the instant petition, it appears that the actual employer of the beneficiary is Kendall Regional Medical Center in Miami, Florida, as opposed to Job2Career.com. It is noted that the actual employer of the beneficiary, as opposed to the entity that hires the beneficiary, needs to establish that a degree or its equivalent is required for the proffered position.² To date this fact has not been established.

With regard to evidence submitted for the record with regard to the actual employer, the letter dated November 2, 2001 and signed by [REDACTED] who identified herself as "administrator" stated the following: "For the critical care nurse position, at the time of hiring, we require a bachelor of science degree or its equivalent in terms of education and experience. All of our critical care nurses have satisfied this requirement." As previously noted, this letter is given no weight in this proceeding based on doubts raised as to Ms. [REDACTED] actual employment and ability to represent both West Side Regional Medical Center and Kendall Regional Medical Center in these matters. In addition, the petitioner presented no documentary evidence for the record with regard to the educational credentials of critical care nurses at Kendall Regional Medical Center. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

With regard to requirements for critical care nurses at Kendall Regional Medical Center, the Bureau consulted the job positions listed by the Kendall hospital on its website at www.kendallmed.com. On April 10, 2003, two critical care nurse

² In *Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000), the court held that the Bureau reasonably interpreted the statute and the regulations when it required the petitioner to show that the entities ultimately employing foreign nurses require a bachelor's degree for employees in that position. The court found that the degree requirement should not originate with the employment agency that brought the nurses to the United States for employment with the agency's clients.

positions were listed. One position advertised for a telemetry/critical care nurse and required one to three years of telemetry or critical care experience, along with a valid Florida Registered Nurse license and a CPR card. The other advertisement which appears more analogous to the proffered position, advertised for 16 available positions for critical care nurses with the following requirements: critical care experience, ACLS certified, CCRN, and a valid Florida registered nurse license and CPR card. The website of National Nurse Search at www.nursesearch.net identified the CCRN acronym as Certified Critical Care Registered Nurse.

Based on this information, Kendall Regional Medical Center appears to require its candidates for critical care nursing positions to be registered nurses with additional education, namely certification in critical care, along with experience in the critical care area. The website states nothing with regard to whether such certification is available only to nurses with bachelor of science degrees, or whether nurses with associate's degrees in nursing can be certified in critical care nursing. Without more persuasive evidence, the actual employer has not established that it requires a baccalaureate degree or higher or its equivalent for entry into the proffered position.

IV. 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 - 8 CFR § 214.2(h)(4)(iii)(A)(4)

The nurse memo previously mentioned also states that petitioners through affidavits from independent experts or other means could demonstrate that the nature of these positions' 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).

As mentioned previously in this proceeding, the petitioner also submitted letters from Dr. [REDACTED] and Dr. [REDACTED]. Based on each of their curriculum vitae, both doctors are well-known experts and researchers in the field of critical care. In his letter, Dr. [REDACTED] the director of the critical care training program, broke down the critical care nursing position to more specific duties. He described the duties as follows:

Nurses in our unit (and in all critical care units) have complex job requirements that are unique and are different from other typical nursing positions. These include:

- o Supervise the nursing care of the critical patient
- o Monitor the vital signs of the critically ill patients frequently with invasive techniques
- o Monitor the heart rhythm (electrocardiographic) of the patients

- o Prepare and maintain clinical records
- o Evaluate the neurologic status of the critical patient
- o Evaluate the saturation of the oxygen in the blood stream in the patients
- o Evaluate the saturation of oxygen from the brain
- o Set up heart catheters for the unstable patients
- o Deliver life saving medications and blood via intravenous route
- o Administer nutrition often by the intravenous route in the critically ill.

Dr. [REDACTED] added that these duties are specifically taught to nurses with bachelor of science degrees in nursing and are not provided in associate degree training programs.

In comparing the duties of registered nurses as identified in the *Handbook* and previously described in this proceeding with the duties for critical care nurses outlined by Dr. [REDACTED], there is some overlap, such as in recording patient symptoms and maintaining clinical records. In addition, the information provided by Dr. [REDACTED] appears to be still generic with regard to specific duties. For example, it is not clear what invasive techniques are used to monitor vital signs of patients in critical care, and how these techniques differ from the same activity with patients in other hospital departments. Another example would be the administration of nutrition by intravenous route and how this job responsibility would vary between patients in critical care and patients in medical/surgical wards.

In addition, the record is devoid of any information provided by the petitioner as to the actual position at Kendall Regional Medical Center. To date the petitioner has only presented problematic documentation that has been given no weight by the Bureau. Without more persuasive evidence on the proffered position at Kendall, the petitioner has not established the specialized and unique nature of the actual position. Nor is the record sufficient to establish that the proffered position meets the criteria outlined in the nurse memo for non-APRN beneficiaries who would work in the critical care field. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Beyond the decision of the director, it is not clear that the beneficiary is qualified to perform the duties of the proffered position. For example, if the critical care nursing position at Kendall Regional Medical Center requires certification in critical care, the record to date only indicates that the beneficiary has an additional registration in midwifery. If the critical care nursing position requires experience in the critical care area, it is not clear from the beneficiary's educational evaluation, if and when she has worked in this area. The registration equivalency document only states that she has work experience in pediatric surgery.

The nurse memo previously mentioned in this proceeding states that with regard to positions involving non-APRN nurses who possess additional clinical experience in areas such as critical care, the petitioner may be able to demonstrate the H-1B petition is approvable by demonstrating that the position is a specialty occupation and that the individual nurse meets the requirements for the position. If certification in critical care is necessary for the proffered position, the petitioner has not established that the beneficiary is qualified for the position. As noted previously, the petitioner has not provided sufficient documentary evidence as to the specific requirements of Kendall Regional Medical Center for the proffered position. Since this petition will be dismissed on other grounds, this issue will not be addressed further.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.