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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: SRC-01-157-51910 Office: Texas Service Center

Date: MAR 26 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)

IN BEHALF OF PETITIONER:



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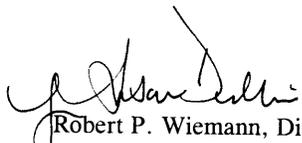
INSTRUCTIONS:

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 approved by the Director, Texas Service Center, who certified his decision to the Administrative Appeals Office (AAO) for review. The decision of the director will be reversed.

The petitioner is a skilled care facility with 165 employees and an approximate gross annual income of \$6 million. It seeks to employ the beneficiary as a charge registered nurse for a period of three years. The director approved the petition, determining that the petitioner had established that the proffered position was a specialty occupation.

On notice of certification, counsel does not submit a brief or any additional documentation. Therefore, the record is considered complete.

Section 214(i)(1) of the Immigration and Nationality 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), a "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 approved the petition, concluding that the evidence submitted by the petitioner established that the position in question normally requires an individual with a baccalaureate degree in a specific specialty, and that the employer normally requires a bachelor's degree or its equivalent for the position.

When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the offered

position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary] will be responsible for the overall management and supervision of a nursing unit. She will train, assign and supervise professional and non-professional staff and be responsible for unit activities. [She] will perform physical examinations and monitor patients on a daily basis. [She] will evaluate, assess and plan care of patients.... [She] will be expected to maintain knowledge of current developments in the field of nursing by reading and attending seminars and in-service training programs.

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.

Contrary to the director's findings, the petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

In determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position, the Bureau looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. A review of the *Handbook*, 2002-2003 edition, at page 269 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a registered nurse:

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.

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 Service 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, Occupational Outlook 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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<sup>1</sup>Williams, 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.

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.

While the beneficiary's duties in this instance include the supervision of a nursing unit, she is not involved in such administrative functions as planning, coordination or supervision of healthcare delivery for the entire facility. Moreover, the duties performed by the beneficiary fall within those normally assigned to a registered nurse, such as performing physical examinations on patients and monitoring their daily progress, as well as evaluating, assessing and planning patient care.

Thus, the *Handbook* does not support a finding that the offered position is a specific specialty based on the beneficiary's supervision of other nurses and performance of administrative duties. Accordingly, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

In attempting to demonstrate that a baccalaureate degree in a specific specialty or its equivalent is common to the health care industry for similar positions, the petitioner provided photocopies of eight newspaper job listings for nursing supervisors which specify that B.S.N. degrees are required for the listed positions. These advertisements are for nursing positions at medical facilities of varying types and sizes and involve positions with a variety of different duties and levels of responsibilities. Some of the advertisements offer little description of the actual duties involved. Of these photocopied job advertisements, at least four pertain to openings at hospitals. Another posting relates to a home health care agency. Only three of the photocopied position listings appeared relevant to facilities similar to that of the petitioner. However, a small number of such listings is not sufficient to demonstrate the existence of an industry standard among similar organizations. In view of the foregoing, it is concluded that the evidence of record does not support a conclusion that the proffered position requires a B.S.N. degree in nursing.

It is also noted that the petitioner has not presented any other evidence, such as letters or affidavits from organizations similar to the petitioner, that such organizations "routinely employ and recruit only degreed individuals" for the position of a registered nurse. *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The petitioner also included a photocopied excerpt from a work entitled, *Dimensions of Professional Nursing*, 8th Edition, c. 1999. At page 312, the publication makes reference to the nursing supervisor as a "middle manager," indicating that:

[T]he supervisor is responsible for several clinical units, delineated by either location or specialty.... Even when limited to nursing, the role of the supervisor often encompasses an enormous amount of responsibility and diversity...which may include hiring and firing; evaluation and improvement of patient care; and staffing and coordination of nursing systems (policies, procedures and resources).

However, the proffered position is that of "charge nurse." A charge nurse is the supervisory nurse on a particular shift of a hospital unit or medical facility, but the supervision of unit or facility does not, in itself, render a position either managerial or administrative.

In addition, the petitioner provided a photocopied excerpt from page 368 of the *Encyclopedia of Careers and Vocational Guidance*, 11th Edition, as follows: "A bachelor's degree in nursing is required for a supervisor or administrative position." This is a general statement intended as a guideline for students choosing a training program for a career as a nurse. Administrative nursing positions typically require a B.S.N. degree, but the duties of this particular position are not administrative in nature. Rather, as stated above, they fall within the normal range of duties of a registered nurse. Moreover, the excerpted passage specified that a bachelor's degree in nursing is required for most supervisory or administrative positions for jobs in *public health agencies*, and for admission to *graduate nursing programs*. The petitioner in the present case, however, is neither a public health agency nor a graduate nursing program. Accordingly, the evidence does not support a finding that a baccalaureate or higher degree or its equivalent is normally the minimum requirement in the health care industry for entry into the proffered position. (Emphasis added.)

In attempting to show that the petitioner normally requires the services of individuals with a B.S.N. degree for the position of charge nurse, the petitioner submitted a list of three charge nurses presumably holding baccalaureate degrees in nursing. However, this list alone is not sufficient to show that the petitioner normally requires a B.S.N. degree for the position of charge nurse. The petitioner has failed to submit any evidence to show that the individuals included on the list actually hold such a degree. In addition, no documentary evidence has been provided to demonstrate that the petitioner requires a bachelor's degree as part of the hiring process, such as copies of previous job announcements or public advertising for open positions. Nor is

there any indication as to whether this list represents all of the charge nurses who have been hired by the petitioner. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. (Emphasis added.)

Finally, the petitioner contends that the proffered position is a specialty occupation because it encompasses specialized and complex duties associated with the management and supervision of care in a skilled nursing unit. On November 27, 2002, the Immigration and Naturalization Service, now 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.<sup>2</sup> However, the mere fact that a nursing position has a title such as "critical care" does not necessarily mean that it qualifies as a specialty occupation.<sup>3</sup>

The Service 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 Service 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

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<sup>2</sup>Williams, 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.

<sup>3</sup>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.

satisfied that the ultimate employment of the alien is in a specialty occupation, regardless of the position's title.

In the present case, although the proffered position has the title of "charge registered 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 performing physical examinations and monitoring patients on a daily basis, as well as evaluating, assessing and planning patient care, are routine to many registered nurse positions. As the record is presently constituted, the Service cannot find that the job fits the criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has, therefore, 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 decision of the director is reversed. The petition is denied.