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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.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[Redacted]

File: EAC 01 216 55457

Office: VERMONT SERVICE CENTER

Date: **MAY 12 2003**

IN RE: Petitioner:
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:

[Redacted]

PUBLIC COPY

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded for further consideration and action.

The petitioner is a long-term health care and rehabilitation facility with 130 employees and a gross annual income of \$6 million. It seeks to employ the beneficiary as an infection control coordinator for a period of two years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel indicated that a brief and/or additional evidence would be submitted in support of the appeal on or before April 28, 2002. To date, no brief or additional evidence has been received by this office. Therefore, the record must be considered complete.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), 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 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 failed to establish that the proffered position of infection control coordinator was a specialty occupation. The director also denied the petition because the petitioner had not submitted a copy of the beneficiary's nursing license from the State of New Jersey or evidence from the State that a license is not required for the position in question, and because the petitioner had not submitted a Form ETA 9035 Labor Condition Application (LCA) that was certified by the Department of Labor (DOL) prior to the filing date of the petition as required by the regulations. 8 C.F.R. § 214.2(h)(4)(i)(B)(1).

On appeal, counsel asserts that the director failed to consider the evidence submitted by the petitioner in response to the Bureau request for additional evidence. In support of the appeal, counsel submits an LCA that was certified by the DOL on March 18, 2002.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,
3. Evidence that the alien qualifies to perform services in the specialty occupation. . . .

In this case, counsel submits on appeal an LCA that was certified by the DOL on March 28, 2002, a date subsequent to the filing date of the petition. A review of the record reveals, however, that the director failed to request a certified copy of the LCA in his Form I-797 Request for Evidence dated August 9, 2001. In view of this fact, the denial of the petition on this basis is withdrawn.

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 an addendum to the initial I-129

petition, the petitioner described the duties of the offered position as follows:

- (1) Plans, supervises and coordinates all infection control activities in all units of the facility;
- (2) Works with facility's Director of Nursing and assures that all departmental procedures are followed in accordance with established policies on infection control;
- (3) Compares laboratory reports with communicable diseases list to identify conditions that require infection control procedures;
- (4) Advises and consults with physicians, nurses, [and] hospital personnel concerning precautions to be taken to protect patients, staff, and other persons from possible contamination or infection;
- (5) Investigates infection control problems and arranges for follow-up care for persons exposed to infection or disease;
- (6) Instructs and educates hospital personnel in various units on universal and specific infection control procedures;
- (7) Compiles statistical data and writes narrative reports summarizing infection control findings;
- (8) May oversee personnel engaged in infection control activities.

The proffered position appears to be that of a health services manager. A review of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, finds that a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. Additionally, the *Handbook* specifically notes that health services managers require training or experience in both health and management. In view of the foregoing, it is concluded that the

petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

Nevertheless, the petition may not be approved at this time. The director has not determined whether the beneficiary qualifies to perform services in the specialty occupation. Although the record indicates that the beneficiary holds the equivalent of a BSN degree, the beneficiary does not possess a master's degree in any of the specific specialties listed above as a standard credential for employment as a health services manager. In addition, the record contains no evidence that the beneficiary has any education, training, or experience as a manager within the health industry. It is further noted that the record does not contain evidence to show that the beneficiary is licensed to work as a registered nurse in the State of New Jersey or evidence from the State indicating that a nursing license is not required for the position in question. Accordingly, the matter will be remanded to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.