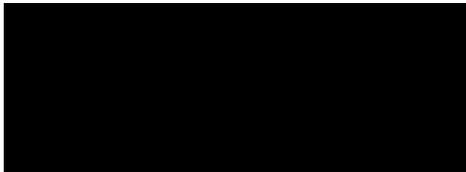


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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



FILE: WAC-01-252-58521 OFFICE: CALIFORNIA SERVICE CENTER DATE:

IN RE: Petitioner:
Beneficiary:



NOV 21 2003

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:



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 Citizenship and Immigration Services (CIS) 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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded for further action.

The petitioner is a home health agency that employs 20 persons and has a gross annual income of \$1 million. It seeks to employ the beneficiary as a quality assurance coordinator. The director denied the petition because the petitioner failed to establish that (1) the offered position qualified as a specialty occupation, and (2) the beneficiary was qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief. Counsel states, in part, that the offered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform the duties of the offered position.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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 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.

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.

In the letter accompanying the I-129 petition, the petitioning entity stated that the duties of the beneficiary are as follows:

Responsible [for] interpreting and implementing quality assurance standards in our facility (and/or HMO) to ensure quality care to patients. She will be reviewing quality assurance standards, and [will] study existing facility (and[//]or HMO) policies and procedures. She will also interview medical facilities [sic] personnel and patients to evaluate [the] effectiveness of the health care workers['] performance. The job also includes reviewing and evaluating patients' medical records and applying quality assurance criteria. In addition[,] she will select specific topics for review, such as problem procedures, drugs, high volume cases, high-risk cases and other factors. She will compile statistical data and write narrative reports summarizing quality assurance findings. She will apply utilization review criteria[,] and [will] review patient records and personnel engaged in quality assurance review of medical records. Finally, she will review the work product of resident nurses (LVN, CNA) and other medical personnel.

On October 1, 2001, the director issued a request for evidence, seeking the following: (1) a detailed job description of the work to be done, including specific job duties, the percentage of time to be spent on each duty, the position's level of responsibility, hours per week of work, the types of employees supervised, the minimum education, training, and experience necessary to do the

job, an explanation of why the work done required the services of a person who possesses a college degree or its equivalent in the occupational field; and (2) employment letters, on company letterhead, from previous employers establishing that the beneficiary has training and/or experience in the specialty occupation, and specifying the dates of employment, the duties the beneficiary performed, and whether the experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent.

In response, counsel submitted a letter, signed by the petitioner, and employment verification letters. The letter described the position as full-time, from 9:00 A.M. to 5:45 P.M., and amplified the job description as follows:

- [The beneficiary] will interpret and implement quality assurance standards in a medical facility to ensure quality care to each patient.
- [The beneficiary] will review quality assurance standards, and study the medical facility's existing policies and procedures.
- [The beneficiary] will write quality assurance policies and procedures.
- [The beneficiary] will interview [the] facilities' [sic] medical personnel and patients to evaluate [the] effectiveness of the health care workers' [sic] performance. She will also review and evaluate patients' medical records, and evaluate nurses' notes, home health aides' notes, therapists' notes[,] and social workers' notes for completeness and conformance to the facility's policies.
- [The beneficiary] will work with nursing supervisors in formulating the patient's treatment plan according to the physician's directions.
- [The beneficiary] will formulate the curricular program for the staff in service, particularly nurses.
- [The beneficiary] will conduct in-service lectures to staff with regards to improving and implementing quality assurance programs to improve the services rendered to the patients.
- [The beneficiary] will also include selecting specific topics for review, such as procedural problems, drugs, high volume and high risk cases, or other factors.
- [The beneficiary] will also compile statistical data and write narrative reports summarizing quality assurance findings.
- [The beneficiary] will apply utilization review criteria and review patient records and personnel engaged in quality assurance review of medical records.
- [The beneficiary] will review the work of resident

nurses ([LVN], CNA) and other medical personnel.

The letter further reported that the bulk of the position's responsibility would be to review medical records, followed by reviewing specific topics such as procedural problems, drugs, high volume and risk cases, or other factors. The letter explained that the other duties would share, on an equal basis, the remaining time.

In addition, the letter alleged that the duties of the offered position related more to quality assurance coordinators, than to the position of health services managers as described in the Department of Labor's *Occupation Outlook Handbook* (the *Handbook*). The letter further stated that the job duties of the offered position would overlap and exceed those of a hospital services manager, thus requiring, according to the Department of Labor's guidelines, a baccalaureate degree.

On May 3, 2002, the director denied the petition, finding that the offered position did not qualify as a specialty occupation and that the beneficiary was not qualified to perform its duties. In the decision, the director explained that, contrary to the petitioner's claim, the 2002-2003 edition of the *Handbook* stated that while many persons in managerial positions possess bachelor's degrees, there is no requirement that a candidate hold a degree in a specific and specialized area. According to the director, the *Handbook* reported that employers accept degrees in business and in the liberal arts, and employers often consider personal qualities and in-house training programs as important as formal academic training. Thus, the director concluded that the petitioner had not demonstrated that a bachelor's degree or higher was a normal requirement for entry into the occupation, that the petitioner normally required a bachelor's degree, or that the proposed duties and level of responsibility indicated complexity or authority beyond what's normally encountered in the field. Finally, the director stated that the beneficiary's employment letters qualified the beneficiary as a resident physician, not a quality assurance coordinator.

On appeal, counsel asserts that the offered position qualifies as a specialty occupation and that the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), never requested evidence to prove that the position of quality assurance coordinator was a specialty occupation. Had CIS requested such evidence, counsel asserts that the petitioner would have demonstrated this; therefore, counsel states that denying the I-129 petition is inherently unfair.

On appeal, counsel states that a baccalaureate is normally the minimum requirement for entry into the offered position. Counsel explains that, under the *Handbook*, the duties of the offered position are equivalent to those of a health services manager: the beneficiary will review patient records that contain information

about a patient's symptoms, medical history, medical examinations, x-rays, laboratory tests, diagnoses, and treatment plans, to ensure proper treatment. Counsel states that 60 percent of the beneficiary's time will be spent reviewing patient records and making determination regarding compliance with the petitioner's quality standards, that about 20 percent of the time will be spent researching and writing quality assurance policies and procedures, and the remaining time will be evenly allocated to the other duties. Thus, counsel claims that the beneficiary must possess an in-depth understanding of medical treatment and procedures.

Counsel, citing the *Handbook*, states 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 that involve managing or helping to manage a facility or system. And, counsel asserts, the *Handbook* reports that a bachelor's degree is adequate for some entry-level positions at smaller facilities and at the department level within healthcare organizations. In addition, counsel states that the *Handbook* mentions that physicians' offices and some facilities may substitute on-the-job experience for formal education.

According to the 2002-2003 edition of the *Handbook*, on page 75, the offered position would be performed by health information and medical record administrators. These managers, the *Handbook* states, establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers. The *Handbook* further states that most health information and medical record administrators possess a bachelor's degree in health information or medical record administration. Thus, the offered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A) because a bachelor's degree in a specific specialty is required to perform the duties of the position.

The second issue to be discussed concerns the beneficiary's qualifications. The director stated in the denial letter that the beneficiary is no qualified to perform the job; however, the director did not elaborate on this issue. The director will need to determine whether the beneficiary qualifies to perform services in the specialty occupation. Accordingly, the matter will be remanded to make such a determination and to review all relevant issues. The director may request additional evidence that is deemed 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 shall 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 AAO for review.