

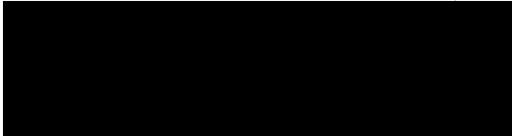
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 MASS. 3/F  
425 Eye Street N.W.  
Washington, D.C. 20536



File: EAC 02 243 52861 Office: VERMONT SERVICE CENTER Date:

NOV 22 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:



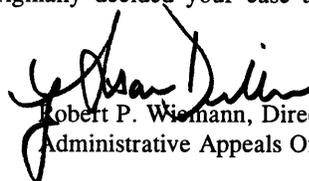
**INSTRUCTIONS:**

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

The petitioner is a nursing home. It has 375 employees, a gross annual income of \$24,000,000, and seeks to employ the beneficiary as a nurse supervisor. The director denied the petition on the grounds that the proffered position is not a specialty occupation, and the beneficiary does not qualify to perform the duties of a specialty occupation.

On appeal, counsel submits a brief and additional information. Counsel asserts that the proffered position qualifies as a specialty occupation due to the complexity of the duties associated with the position, and that a minimum of a bachelor's degree is required for entry into the position. In support of that assertion counsel submits a position evaluation from Joanne Sabol Stevenson, Professor, College of Nursing at Rutgers University. Counsel further asserts that the beneficiary is qualified to perform the services of the offered position in that she possesses the equivalent of a Bachelor of Science Degree in Nursing from an accredited institution of higher learning in the United States.

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, in part, 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 Immigration and Nationality Act (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 AAO does not simply rely on a position's title 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 AAO considers. The duties of the proffered position were detailed with the filing of the I-129 petition:

Greenpark Care Center Inc. seeks to employ [the beneficiary] to prepare work schedules and assign duties to the evening shift nursing staff which includes: licensed practical nurses, head nurses, registered nurses and nurse aids. [The beneficiary] will be responsible for the supervision of the evening shift nursing staff. She will coordinate the work of the nursing staff with [eight] doctors who will be available on call during the evening shift (during the day one o[r] more doctors are physically present). Her job will include the following duties:

- Planning, organizing and directing the activities of the evening shift;
- Preparing the work schedule and assigning duties to

the nursing staff;

- Establishing policies and procedures for the nursing department;
- Monitoring the use of supplies and equipment to avoid abuses;
- Supervising and coordinating nursing activities during the evening shift;
- Responding to emergencies and assigning staff accordingly during emergencies;
- Observing techniques of and services rendered by nursing staff to ensure adherence to guidelines;
- Demonstrating techniques for new personnel to provide training and direction; [and]
- Identify[ing] problem areas in the nursing department such as understaffing, absenteeism, and wastefulness, and tak[ing] corrective action.

Subsequent to the filing of the I-129 petition, the director requested additional evidence. Specifically, the director requested: evidence that a baccalaureate degree in a specific specialty is a standard minimum requirement for the offered position; a detailed job description on file with the petitioner's personnel or human resource office; the job announcement advertised for the proffered position; a percentage breakdown of the number of hours required for each specific duty; the number and titles of employees the beneficiary would supervise; an organizational chart for the hospital and department where the beneficiary would be assigned; a list of individuals employed in the same capacity of the offered position with proof of their formal education; copies of industry job postings for similar positions; and proof that the beneficiary has the equivalent of a bachelor's degree in nursing. The petitioner responded in detail to the director's request. A portion of that response included the following job description:

#### JOB DESCRIPTION

TITLE: SUPERVISOR, EVENING/NIGHT SHIFT

#### QUALIFICATIONS:

- Licensed and currently registered as [a] professional nurse in the State of New York;

- Baccalaureate in related area required;
- Demonstrated competence of leadership ability; [and]
- Commitment to continued professional development by attending workshops, seminars or conferences.

GENERAL STATEMENT:

Performs administrative functions and assumes responsibility for nursing decisions in absence of administrator, Director of Nursing, [and] Assistant Director of Nursing. Supervises and assigns duties to Charge Nurse, Registered Nurses, Licensed Practical Nurses, Certified Nursing Assistants, and all other employees during the shift.

FUNCTIONAL SUPERVISOR'S DUTIES: EVENING/NIGHT SHIFT

- Receive report from outgoing supervisor; include 24 hour report;
- Total rounds on all residents at start of shift. Particularly review all residents on 24 hour report, and any physically ill resident;
- Review with charge nurse/RN specific residents to be observed during the night, and check to see that it is maintained;
- Make pertinent chart entries relative to the following: (1) Any unusual complaints from a resident; [and] (2) Any change in the resident's physical or mental status;
- Complete Census report daily;
- Coordinates and Interprets standards of nursing practice and procedure to ensure proper patient care and documentation;
- Review monthly schedule and insure coverage on a daily basis;
- Monitoring the use of supplies and equipment to avoid abuses;
- Responsible for coordinating the sterilization

of equipment and insuring that it is done;

- Responsible for assessing performance of charting of agency nurses prior to their leaving the tour;
- In testing of diabetes; responsible for Glucometer readings on any patient whose chemstix level is too high or too low;
- Observing techniques of and services rendered by nursing staff to ensure adherence to guidelines;
- Responsible for monthly scheduling of nursing personnel to affect specific coverage;
- Responsible for checking daily attendance and reassigning personnel in accordance with patient needs;
- Daily rounds on all units with periodic check of assignments to ensure maximum patient care by proper delegation of duties;
- Supervise RNs and LPNs when necessary with direct patient care;
- Schedule and conduct staff conferences;
- Present In-Service Education topics as directed;
- Contacting Physician when necessary in an emergency and responsible for transferring patients to hospital after contacting attending physician;
- Follow-up on disposition of patients sent to Emergency Room;
- Responsible for checking all patients who have had an accident/incident, and document on chart. In completing the report sheet on the accident/incident, insures that RN/LPN completes corrective action. Notify Medical Director;
- Conduct Quality Assurance audits on ongoing basis;
- Audit charts periodically;

- Identify problem areas in the nursing department such as understaffing, absenteeism, and wastefulness, and take corrective action;
- Responsible for ongoing written evaluations of RNs, LPNs, and CNAs, including the right to recommend promotions;
- Responsible for assessing staff performance in relation to job functions;
- Demonstrating techniques for new personnel to provide training and direction;
- Responsible for assessing the ability of new employees to function on tour;
- Does employee disciplinary counseling as required;
- Is objective, therefore, with complete documentation and with good judgment may take disciplinary action when needed, including the right to suspend and/or bring charges against any employee;
- Performs assessment on new admissions and initiates all paperwork required, including Comprehensive Care Plan;
- Responsible for auditing charts, medex, and narcotics, sheets effecting corrections by charge nurses as needed;
- Completes bed retention forms and returns to Social Service Department;
- Conduct staff problems and in-service programs in conjunction to in-service coordinator pertinent to resident needs;
- Responsible for keeping physicians informed of outdated orders and change in patient/resident status;
- Review medication nurses regimens, medication carts and current practices. Ascertain LPN knowledge of medication being administered,

their side effects, and her responsibilities;

- Check narcotic count for assigned areas on daily basis;
- Make final rounds, pick up 24 hour reports;
- Give reports to oncoming supervisor, include 24 hour report; [and]
- Discussion of report with oncoming supervisors at change of tour.

The director denied the petition on the grounds that the proffered position did not qualify as a specialty occupation, and that the beneficiary did not qualify to perform the duties of a specialty occupation. On appeal, counsel asserts that: the proffered position qualifies as a specialty occupation due to the complexity of the duties associated with the position; a minimum of a bachelor's degree is required for entry into the position; and the beneficiary is qualified to perform the services of the offered position in that she possesses the equivalent of a Bachelor of Science Degree in Nursing from an accredited institution of higher learning in the United States.

The petitioner has failed to qualify the offered position as a specialty occupation. The job responsibilities to be assigned to the beneficiary fall within the duties of a registered nurse, and head nurse or nurse supervisor. In the *Occupational Outlook Handbook*, 2002-03 edition, (*Handbook*), at 268, the Department Of Labor describes, in part, the duties of a registered nurse, and head nurse or nurse supervisor:

Registered nurses (RNs) work to promote health, prevent disease, and help patients cope with illness. They are advocates and health educators for patients, families, and communities. 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.

. . . .

Nursing home nurses manage nursing care for residents

with conditions ranging from a fracture to Alzheimer's disease. Although they spend much of their time on administrative and supervisory tasks, RNs also assess resident's health condition, develop treatment plans, supervise licensed practical nurses and nursing aides, and perform difficult procedures such as starting intravenous fluids. . . .

. . . .

Head nurses and 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.

A review of the *Handbook* finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a registered nurse, head nurse or nurse supervisor.

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. A.D.N. programs, offered by community and junior colleges, take about 2 to 3 years. About half of the 1,700 RN programs in 2000 were at the A.D.N. level. B.S.N. programs, offered by colleges and universities, take 4 or 5 years. More than one-third of all programs in 2000 offered degrees at the bachelor's level. Diploma programs, administered in hospitals, last 2 to 3 years. Only a small number of programs offer diploma-level degrees. Generally, licensed graduates of any of the three program types qualify for entry-level positions as staff nurses. *Id* at 269.

The proffered position is a nursing position beyond the entry level registered nurse, but it is not analogous to an administrative nursing position. Citizenship and Immigration Services (CIS) issued a policy memo regarding H-1B nurse petitions on November 27, 2002.<sup>1</sup> With regard to administrative nursing positions, that memo provides as follows: "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.)" The *Handbook*

<sup>1</sup> Memorandum from [REDACTED] Executive Associate Commissioner, INS 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).

reference is to the classification of medical and health services managers. On page 75, the *Handbook* states:

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.

Any of the three career paths noted above are sufficient for the beneficiary to perform the duties associated with the offered position. Experience and good performance can lead to promotion for a registered nurse to more responsible positions, such as assistant head nurse or head nurse/nurse supervisor. There is no requirement, however, that a nurse have a baccalaureate or higher degree, or its equivalent, as a minimum requirement for entry into those positions. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Second, the petitioner presented a professional position evaluation from Joanne Sabol Stevenson, Professor at the College of Nursing, Rutgers University. Dr. [REDACTED] opined that the proffered position could not be performed by an individual with academic training less than the equivalent of a Bachelor of Science Degree in Nursing Science or a closely related discipline. The opinion, however, is not based upon any quoted studies or statistical data. It represents simply the learned opinion of Dr. [REDACTED] and is contrary to the above cited information contained in the *Handbook*. The petitioner also presented job listings indicating that a bachelor's degree was required by the subject employer for the advertisements presented. Neither the advertisements nor the opinion of Dr. [REDACTED] are sufficient in scope or detail, however, to establish that a degree requirement is common to the industry in parallel positions among similar organizations. Also, the duties of the offered position are common to supervisory nursing positions in the industry and not so complex or unique that they can be performed only by an individual with a degree.

Third, the petitioner has not shown that it has, in the past, normally required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. The petitioner does provide a list of nine employees that hold supervisory nursing positions at the petitioner's facility. The petitioner states that eight of these individuals hold a bachelor's degree in nursing, with one holding a master's degree in business administration. The petitioner did not, however, provide documentation to support this assertion. *Matter of Treasure Craft of California*, 14 I&N Dec. 45, 49 (Comm. 1971). Nor does the petitioner state that all previous registered nurse supervisors at

the petitioner's facility have held bachelor's degrees. The evidence presented is insufficient to establish that the petitioner has historically required a bachelor's degree for the offered position. Even if that were the case, the duties of the proffered position do not require the theoretical and practical application of a body of highly specialized knowledge. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5<sup>th</sup> Cir. 2000).

Finally, the nature of the specific duties is not so specialized or complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. They are general supervisory nursing duties common to the industry.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, 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 and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed.