

U.S. Department of Homeland Security

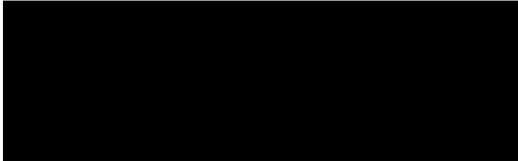
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, 20 Mass, 3/F
25 Eye Street, N.W.
Washington, D.C. 20536



OCT 23 2003

FILE: SRC 02 169 54022

OFFICE: TEXAS SERVICE CENTER

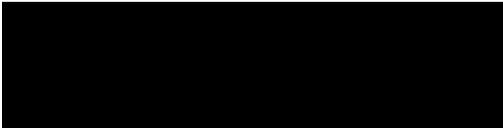
DATE:

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)

IN BEHALF OF PETITIONER:



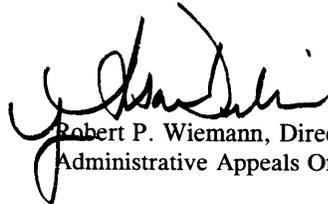
INSTRUCTIONS:

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, Texas Service Center, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a home healthcare provider that employs 200 persons and has a gross annual income of \$400,000,000. It seeks to employ the beneficiary as a healthcare manager. The director denied the petition because the beneficiary "does not possess the minimum of a bachelor's degree or its equivalency in the occupation being offered."

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the beneficiary's degree and work experience qualify him for employment in the occupation of healthcare manager.

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.

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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or

- (C) (i) experience in the specialty equivalent to the completion of such degree, and
- (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Implicit in the director's decision is her determination that the proffered position is a specialty occupation in the area of healthcare management, which requires the beneficiary to hold, at a minimum, a bachelor's degree in management or a related field, or the equivalent combination of education, training and experience.

A review of the record reveals that the beneficiary holds a bachelor of science degree in respiratory therapy from Emilio Aguinaldo College, Manila, Philippines. A credentials evaluation service has equated this degree to a United States bachelor of science degree in respiratory therapy. The record also contains a letter from the petitioner that describes the beneficiary's qualifications:

[The beneficiary] is a college graduate, earning a Bachelor's Degree in Respiratory Therapy from the Emilio Aguinaldo College, in Manila, Philippines. He then worked as a Respiratory Therapist for Respicare Enterprises, a home health service and equipment provider in the Philippines. During his tenure at said company, he successfully increased in rank and is currently a Department Manager for Stocks and Supplies. In this capacity, his job duties include the following:

Supervision of department personnel and staff. Analysis and organization of department resources to ensure efficient and proper storage and delivery of supplies. Management of department clerical duties such as bookkeeping, preparation of payrolls, flow of correspondence, filing, requisition of supplies, and staffing. Design forms for requisition, order or sale if current forms are not adaptable. Prepare reports for presentation to management. Compile and store stock data and other business information for future reference.

He has also attended numerous seminars and trainings that enhanced his managerial/supervisory skills. Among the seminars he attended are the 5th Annual Convention of the Philippine Association for Pulmonary Care, the 3rd Biennnium Symposium on Respiratory Care at Nursing Centers, and Care Giving Seminar at Mary Johnson Hospital. We have attached the certificates for your reference.

The certificates submitted by the petitioner evidence training sessions across a broad spectrum of subjects, such as pulmonary medicine, network technology, basic microcomputer hardware servicing, computer electronics, meat processing, basic electronics, respiratory medicine, current issues in the management of chronic lung disease, respiratory therapy, airways obstruction, chest surgery and healthcare, and emergency medicine and acute care. One certificate recognizes completion of a months-long clinical training course for respiratory therapy interns.

In denying the petition, the director stated:

A review of the evidence does not support the claim of the beneficiary having worked in a managerial capacity for his foreign employer. There are no employment letters from current or past employers attesting to his work experience or job duties. The seminars and training attended are mainly health care and computer type courses/training/seminars. These do not equate to a bachelor's degree in office management. Again, the beneficiary's educational degree is in respiratory therapy. The unsupported claim of the beneficiary having work experience in management positions cannot be verified. It cannot be determined that working as a department manager for stocks and supplies would translate to a health care manager or office manager. It cannot be determined that the beneficiary's education and work experience equate to the equivalent of a bachelor's degree in management.

On appeal, counsel draws attention to the Internet advertisements as being from "similar companies for the same position requiring the same academic level of achievement from applicants for the position." Counsel also asserts that the combination of the beneficiary's bachelor's degree and work experience in the

healthcare industry equip him with experience and knowledge that are critical to the duties and responsibilities of the proffered position. According to counsel, the denial reflects an erroneous view that that "only management-degreed individuals may seek H1-B1 status for managerial positions." The additional evidence submitted with the appeal is an Internet printout on respiratory therapists which conforms to pages 270-272 of the *Handbook's* printed edition.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

(1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

(4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

On appeal, counsel provides a copy of the *Handbook* section on respiratory therapists (pages 270-272), to support the position that a healthcare manager's position is a natural career track for respiratory therapists and that, therefore, a respiratory therapy degree must carry the requisite specialized knowledge for the proffered position. However, the *Handbook* section that counsel cites does not support either proposition. No language in the *Handbook* indicates that a bachelor's degree in respiratory therapy qualifies an individual for an occupation that requires a

bachelor's degree or higher in healthcare service management. The petitioner also fails to submit documentary evidence that a degree in respiratory therapy is a minimum qualification for entry into the healthcare management occupational field. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Therefore, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position based upon his education alone.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), a beneficiary who lacks a required degree may still qualify to perform services in a specialty occupation if the beneficiary's education, specialized training, and/or progressively responsible experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. Pursuant to 8 C.F.R. § 214.2(H)(4)(iii)(D), equivalence to completion of a degree may be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has

been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record does not contain an evaluation from an official who has authority to grant college-level credit, as specified at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). There is also no evidence that the beneficiary has taken recognized college-level equivalency examinations or special credit programs. Additionally, there is no evidence that the beneficiary has received certification or recognition from a nationally-recognized professional association or society that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty.

The AAO now turns to the provision at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which allows Citizenship and Immigration Services (CIS) to determine whether the beneficiary has acquired the equivalent of the required degree through a combination of education, specialized training, and/or work experience.

In pertinent part, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) provides:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The petitioner's evidence fails to meet these requirements.

First, the numerous training certificates provide little information beyond the general subject of the training. They illuminate neither the specific content of the training nor the expertise of the trainers. Furthermore, they appear to be outside the specific specialty disciplines required for the proffered position or for generalists in health services management. Second, the petitioner did not present any letters from the beneficiary's past employers to show that the beneficiary's prior work experience included the theoretical and practical application of specialized knowledge required by the specialty, and that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. The petitioner's description of the beneficiary's work history and training cannot substitute for letters from the beneficiary's actual employers. Finally, the petitioner did not present any of the documentation required to establish that the beneficiary has recognition of expertise in the specialty occupation.

There is insufficient evidence that the beneficiary possesses the qualifications to successfully perform the duties of a healthcare services manager. Thus, the director's decision will not be disturbed.

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 appeal is dismissed. The petition is denied.