



U.S. Citizenship  
and Immigration  
Services

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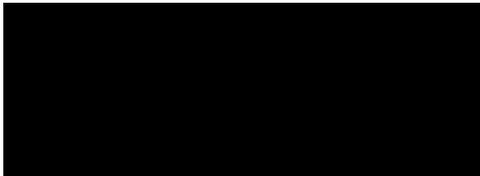


FILE: WAC 02 106 53058 Office: CALIFORNIA SERVICE CENTER Date: 11/11/2014

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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 of the Administrative Appeals Office 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.

*Mari Johnson*

for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a rehabilitation hospital. In order to employ the beneficiary as a quality assurance coordinator, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition on two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is properly licensed to serve in the proffered position, which the director determined to be a nursing position.

On appeal, counsel submits a brief in support of his contentions that the evidence establishes both that the proffered position is a specialty occupation and that it does not require a nursing license.

As will be explained below, the AAO has determined that the director was correct only in denying the petition for failure to establish that the proffered position is a specialty occupation. The AAO reached this determination on the basis of the entire record of proceeding before it, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the material submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief.

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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The Form I-129 provided this general description of the proposed duties:

Perform the duty of making sure that all policies and procedures of the Healthcare facility meets [sic] the standard requirement of the quality assurance program. Gather pertinent data and write quality assurance reports to be reviewed by the Director of Nursing on a regular basis. Randomly review patient's [sic] medical records and interview hospital personnel to evaluate effectiveness of the program.

The AAO paid particular attention to all of the submissions bearing on the nature of the quality assurance coordinator duties, including counsel's letter of response to the RFE, which expounded upon the requirements of the clinical, non-clinical, and peer-review program aspects of the position. This information persuaded the AAO that this particular proffered position does not appear to require a nursing license. However, this information and the totality of the other evidence in the record about educational requirements do not substantiate counsel's assertion that performance of the position requires at least a bachelor's degree in a healthcare discipline.

It is noted that [REDACTED] opined that the duties listed by the petitioner for the proffered position require "a minimum of a Bachelor's Degree in a medical field with some experience." However, the AAO accorded little weight to the doctor's view. Although [REDACTED] refers to himself as an expert, he provides no information as to the nature of his practice, the length of his experience, any business relationship he may have with the petitioner, or his familiarity with positions similar to the one in question. Furthermore, the only information the doctor provided about the basis for his conclusion that the proffered position requires "a high level of pharmacological, physiological, and substantive medical knowledge" that "could only be obtained by a minimum of a Bachelor of Science in a medical field and some experience in an acute or sub acute facility" is this general and conclusory statement:

For example, the candidate would be required to review medical records and oversee quality assurance data. This could not be done without the aid of the educational background I stated.

Like [REDACTED] opinion, the letter from the president/administrator of [REDACTED] Hospital (BCH) is relevant but unconvincing. The letter states that this hospital requires that its quality assurance coordinator have "a minimum of [a] Bachelor of Science [Degree] in Healthcare with one-year experience in healthcare environment," but it does not provide the factual basis upon which BCH based this requirement or, for that matter, how the duties of the position at BCH compare with those of the proposed by the petitioner.

Furthermore, the AAO finds that the director/administrator has not provided a factual basis for his opinion that “it is an industry norm to require a minimum of a Bachelor’s degree due to the complex and specialized duties of Quality Assurance Coordinator.” The director/administrator merely asserts that he draws this observation “[f]rom my experience,” and gives no information about what that experience encompassed in terms of quality assurance coordinator positions outside his own hospital.

CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The four job-vacancy advertisements issued by other employers have no evidentiary impact. They are too few to establish an industry-wide educational requirement. It is also noted that the information in at least three of the four advertisements fails to establish that their positions are sufficiently similar to the proffered position to corroborate its educational requirements. The Broward County advertisement is for a position in a county’s Human Services Department, not a hospital, and this county position involves, in part, intra-departmental coordination with other Human Services professionals, not hospital personnel. The advertised Washoe Health System position appears to involve much broader responsibilities than the proffered position. This position reports to the medical director of a health plan; manages “all activities and functions of the Quality Improvement Program; monitors and collects data “from all venues of the Health Plan including health services, provider relations, survey data, marketing, finance, information resources, member services and claims”; and is responsible “to facilitate and train directors, managers, executives, and staff on methods and processes to develop and implement organization-wide quality improvement measures and activities.” The University Health System of Eastern Carolina advertisement does not provide any specific duties, and so it does not demonstrate that its position is probative on the one proffered here.

Counsel is incorrect in his assertion that the “7” SVP rating that the *Dictionary of Occupational Titles (DOT)* accords to the quality assurance coordinator occupation equates to a bachelor’s degree. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

Because the evidence of record does not establish that the proffered quality assurance coordinator position is one that normally requires a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position’s duties, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence does not establish a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. As discussed above, neither the job vacancy advertisements from other employers nor the opinion from BCH’s president/administrator meet this criterion. It is also noted that, to the extent that they are described in the record, the duties do not comprise any of the positions for which

the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports a requirement for at least a bachelor's degree in a specific specialty. As the AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations, the AAO would have attached significant weight to such a report.

The AAO also finds that the petitioner did not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). That is, the evidence of record does not establish that the proffered position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific specialty. The record fails to establish, for instance, that the position could not be performed adequately by an experienced registered nurse with academic training limited to an associate degree or hospital diploma.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – “[t]he employer normally requires a degree or its equivalent for the position” – has not been met. The petitioner identified two persons as having been hired for the proffered position with degrees similar to the beneficiary's. However, this information does not establish that the degree qualifications set by the petitioner were dictated by job performance aspects that necessitated baccalaureate-level knowledge in a specific specialty.

Finally, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) was not satisfied. The evidence of record does not establish that the specific duties are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The evidence establishes that the quality assurance coordinator position generates a number of performance requirements, including but not limited to, the need for administrative skills, familiarity with medical terminology, the ability to understand charts and medical records, and an understanding of the duties of various types of hospital staff. However, the evidence does not establish that the duties require the type of knowledge that is usually associated with a baccalaureate or higher degree in a specific specialty.

As indicated above, the director erred in that part of the decision which determined that the proffered position requires a nursing license. However, the AAO affirms that portion of the decision that denied the petition for failure to establish that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied.

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.