



U.S. Citizenship
and Immigration
Services

D 2

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: 2011 07 14

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

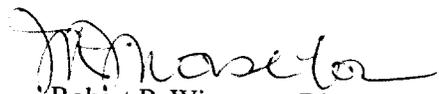
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[Redacted]

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.


Robert P. Wiemann, Director
Administrative Appeals Office

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 skilled nursing facility that seeks to employ the beneficiary as a "Health Service Coordinator." The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a 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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a "Health Service Coordinator." Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 25, 2002 letter in support of the

petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: conducting and coordinating health programs or services in hospitals, homes, businesses, or other institutions; monitoring medical records to schedule services or determine patient review dates; analyzing health care program, admission, and treatment to ensure quality and compliance with reimbursement policies; formulating and negotiating health program contracts between insurance companies and health care providers; presenting health care programs to participating parties; interviewing individuals to obtain medical histories; maintaining health records; evaluating services and preparing reports; investigating and resolving claims; reviewing and approving patient admissions or referring for review; compiling information and statistics; overseeing and coordinating staff; conducting training; and participating in health advisory committee or quality assurance review. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in nursing for the proffered position.

The director found that the proffered position was not a specialty occupation because the job combines the duties of the following three positions: an administrative services manager; a nurse; and a quality assurance coordinator. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into these positions was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position is primarily that of a health services coordinator, whose duties involve patient services rather than direct patient treatment. Counsel states further that the *Dictionary of Occupational Titles (DOT)* assigns the position an SVP rating of 7, which according to counsel, requires a degree to enter into the position. Counsel submits copies of job advertisements to demonstrate that most health care businesses require a bachelor's degree for positions similar to the proffered position. Counsel also states that the health service coordinator position is new and evolving, and submits a survey published by the Minnesota Workforce Center, which finds that many new and evolving positions are produced by the service and manufacturing sectors.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

First, the AAO does not agree with the petitioner's assertion that the proffered position would normally require a bachelor's degree in nursing or a related field. The proffered position is that of a "Health Service Coordinator." The AAO does not use a title, by itself, 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. In its *Handbook*, 2004-2005 edition, the DOL states the following about the training and educational requirements for registered nurse positions:

There are three major educational paths to registered nursing: a bachelor's of science degree in nursing (BSN), an associate degree in Nursing (A.D.N.), and a diploma. . . . Generally, licensed graduates of any of the three types of educational programs qualify for entry-level positions as staff nurses.

[S]ome career paths are open only to nurses with bachelor's or advanced degrees. A bachelor's degree is often necessary for administrative positions, and it is a prerequisite for admission to graduate nursing programs in research, consulting, teaching, or a clinical specialization.

The *Handbook* does not elaborate on administrative nursing positions within this classification, although reference is made to two nursing positions within the classification of registered nurse that appear analogous to the proffered position. The *Handbook* states the following about head nurses or nurse supervisors:

Head nurses or nurse supervisors direct nursing activities, primarily in hospitals. 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 that the patients receive proper care. They also may ensure that records are maintained and equipment and supplies are ordered.

The proffered position appears to resemble a nursing position beyond the entry-level registered nurse, but it does not appear to be analogous to an administrative nursing position. A recent CIS policy memo provides the following commentary on administrative nursing positions: "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, *Handbook* at 75.)" The *Handbook* reference is to the classification of medical and health services managers. The *Handbook* states:

The occupation, 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.

In this case, the petitioner has not demonstrated that the proffered position is an administrative position, which would require a registered nurse with a master's degree in nursing or health administration. Rather, the proposed duties are similar to those of a head nurse or nurse supervisor, as described herein, which do not require a bachelor's degree, or equivalent, in a specific specialty for an entry-level position. As such, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. The *DOT's* SVP rating does not indicate that a particular occupation requires the attainment of a

baccalaureate or higher degree, or its equivalent, in a specific specialty 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. The classification does not describe how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, counsel submitted Internet job postings for health-related positions. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. For example, one of the positions is that of health services case manager for Lovelace Health Systems, which is a large integrated delivery health system based in Albuquerque, New Mexico, a wholly-owned subsidiary of CIGNA Corporation, that comprises nearly 300 salaried physicians and 2,000 contract physicians in its statewide network. The proposed duties include providing direction, guidance, and leadership to patient care and case management coordinators. Another position is an alternate care coordinator for Kaiser Permanente, the largest nonprofit health care organization in the United States. The petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described in the advertised positions. Thus, the advertisements have little relevance.

The survey published by the Minnesota Workforce Center, which discusses new and evolving occupations including resident assessment coordinator, adult nurse practitioner, and health quality assurance coordinator, is noted. Counsel states, in part: "The same survey also indicates that employers, on average, require applicants with a Bachelor's degree to fill new or evolving health service positions." It is noted, however, that the survey does not include a comprehensive description of the duties of these occupations and, therefore, it cannot be assumed that the proffered position is similar to the positions described in the survey. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record does not include any evidence from professional associations regarding an industry standard. In addition, no documentation to support the complexity or uniqueness of the proffered position was submitted. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.