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U.S. Citizenship  
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FILE: WAC 03 061 55818 Office: CALIFORNIA SERVICE CENTER Date: DEC 28 2004

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:



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

**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 an adult residential home facility for the mentally disabled that seeks to employ the beneficiary as a human services 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief.

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 full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an 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.

The record of proceeding before the AAO contains, in part: (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 human services coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 26, 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: coordinating human services programs; providing comfort and

counseling to the mentally ill patients and families; planning outreach, social rehabilitation, and training programs for patients; and counseling caregivers and other staff members for stress-related problems. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in social work for the proffered position.

The director found that the beneficiary was not qualified for the proffered position, which is primarily that of a social worker, because the beneficiary does not possess the required State license. On appeal, counsel states, in part, that the beneficiary is qualified for the position because the proffered position "is one of those position [sic] in the grey area which is between a Social & Human Service Assistant and Social Worker."

Upon review of the record, it is determined that the proffered position is primarily that of a social worker, and is not a social and human service assistant who usually works under the direction of professionals from a variety of fields, such as nursing, psychiatry, psychology, rehabilitative or physical therapy, or social work. In this case, counsel's September 8, 2003 letter, written in response to the director's request for additional evidence, indicates that the beneficiary would be working independently without supervision and performing highly complex duties, such as planning and coordinating human services programs, conducting patient interviews, implementing treatment plans, and directing and supervising the caregivers. A review of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, finds that a bachelor's degree in social work (BSW) is the most common minimum requirement to qualify for a social worker job and that all States and the District of Columbia have licensing, certification, or registration requirements. In this case, the beneficiary holds a bachelor's degree in social work and a social worker license conferred by Filipino institutions. The record contains an evaluation from a company that specializes in evaluating academic credentials concluding that the beneficiary possesses the equivalent of a bachelor of science degree in social work granted by regionally accredited colleges or universities in the United States. The beneficiary, however, does not hold the required U.S. State license. For this reason, the petition may not be approved.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. 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.