

**PUBLIC COPY**

**Identifying data deleted to  
prevent disclosure of warranted  
invasion of personal privacy**

**DO**

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

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

[Redacted]

FEB 02 2004

File: LIN 02 295 53648

Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner:  
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 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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner operates a home healthcare service. It has 60 employees, and a gross annual income of \$2,660,218. The petitioner seeks to employ the beneficiary as a staff and health educator for a period three years. The director determined that the proffered position did not qualify as a specialty occupation, and that the beneficiary was not qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief asserting that the offered position meets the regulatory requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) for a specialty occupation, and that the beneficiary is qualified to perform the duties of a specialty occupation.

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 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:

[A]n 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;

The employer normally requires a degree or its equivalent for the position; or

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.

When determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties of the proffered position were detailed as follows, with the filing of the I-129 petition:

The position we are offering to [the beneficiary] is that of a Staff and Health Educator in the home healthcare facility. The staff and Health Educator acts a member [sic] of the management team by developing, implementing[,] and evaluating educational plans for healthcare services which includes orientation, competency assessment/validation, staff performance development and policy/procedure development. She will also coordinate resources to provide a learning environment that enables participants to develop behavioral skills to perform their responsibilities in a knowledgeable and competent manner.

In accordance with our established practice, our requirements for the professional position of a Staff and Health Educator are [a] Bachelor of Science [Degree] in any health related field, and with good mental and physical health. Good verbal and written communication skills are a must. Good organizational

and leadership skills are required.

The beneficiary will utilize her knowledge and experience in the field for designing, enhancing, integrating, creating and implementing continuing education, educational development of the staff. She will provide training and support and educational advancements of the staff.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner submit: a detailed job description with a breakdown of the percentage of time to be spent on each duty; evidence that the offered position satisfies one of the criteria contained in 8 C.F.R. § 214.2(h)(4)(iii)(A); and an explanation of how the beneficiary's educational background relates to the offered position.

In response to the director's request, the petitioner provided the following:

The position that the petitioner is offering to [the beneficiary] is that of a Staff Educator/Health Educator in a long term healthcare facility. The beneficiary will spend 65% of her time as Staff Educator and 35% as Health Educator. The job duties of a Staff Educator includes [sic]: under limited direction and according to established policies and procedures, acts as a member of the management team by assessing, developing, implementing and monitoring a complete plan of educational development and continuing education to the staff under the supervision of the Administrator, and will perform the following duties:

- Formulate, develop, evaluate, modify and maintain educational strategies for patient and family consistent with expected clinical performance through such means as: 10%

Contributes to the development of philosophy, objectives, policies, procedures and position descriptions for the department; [and]

Participates in establishing priorities for staff development activities.

- **Provides leadership** [Emphasis petitioner's] in formulating the philosophy and objectives of the staff development activities in accordance with the philosophy and objectives of the agency[;] 10%

- **Project and implement** [Emphasis petitioner's] a budget that will provide the necessary human and physical resources to achieve goals of the program, cost effectiveness, and cost containment by: 8%

1. Utilizing short and long-range goals as a basis for budget planning;
2. Involving appropriate persons in preparation and review of the budget; [and]
3. Identifying adequate funds needed to plan, conduct, and evaluate the staff development program.

**Identify employee's** [Emphasis petitioner's] learning needs by using, but not limited to: 10%

Position descriptions;  
 Policies, procedures, and directives;  
 Current literature;  
 Incident/accident reports;  
 Employee performance appraisals;  
 Achievement results of personnel in relation to expected outcomes of staff development offerings;  
 The employee's identification of his/her own learning needs;  
 Established standards of care; [and]  
 Conferences with supervisory personnel and the director/head of each department.

**Plan** [Emphasis petitioner's] offerings that correlate with the total program or curriculum and lead to the desired behavior. Steps in planning include: 10%

1. **Establishing priorities for learning** [Emphasis petitioner's];
2. Allowing sufficient planning time;
3. **Setting reasonable and attainable objectives** [Emphasis Petitioner's];
4. **Determining criteria for measurement of expected behavioral change(s)** [Emphasis petitioner's];
5. Developing course outlines and teaching strategies;
6. Identifying appropriate media, teaching methods, and resources;
7. Arranging for space, equipment, and teaching aids; [and]
8. Informing participants and others concerned about the offerings.

Communicate the plan for the program to encourage

and foster participation and cooperation through: 5%

- 1. Discussing plans with appropriate individuals[; and] Conferences with supervisory personnel and the director/head of each department.
- Plan offerings and develop course outlines and teaching that correlate with total program or curriculum and lead to the desired behavior. Steps in planning include: 5%
  - 1. **Establishing priorities for learning** [Emphasis petitioner's];
  - 2. Allowing sufficient planning time;
  - 3. **Setting reasonable and attainable objectives** [Emphasis petitioner's];
  - 4. **Determining criteria for measurement of expected behavioral change(s)** [Emphasis petitioner's];
  - 5. Identifying appropriate media, teaching methods, and resources;
  - 6. Arranging for space, equipment, and teaching aids; [and]
  - 7. Informing participants and others concerned about the offerings.

by: **Implement established plan to meet the learning needs** 5%

Establishing an effective teaching/learning climate;

Evaluate results of the total staff development/patient health education program effort as well as specific learning offerings; 5%

Participate with others in counseling personnel about their educational needs; 7%

**Initiate** [Emphasis petitioner's] and/or participate in studies and research activities related to staff development education and evaluate reported studies and research findings for application to staff development programming. 10%

**Presents interdisciplinary patient-centered conferences** to coordinate and enhance plan of care development, revision and evaluation: 5%

Determining types of record system to me maintained in the categories of total

program, single offering, individual, and budget;

Designing a system in which essential information is recorded and easily retrieved; Utilizing records for evaluating accomplishment of goals and objectives for research purposes and future planning.

**Asses[s] for, develops and evaluates** [Emphasis petitioner's] individualized plans of care for patients presenting subtle or more complex variables within physiologic and psychosocial functioning, educational needs and discharge planning needs; [and] 5%

Designs, develops, executes and evaluates training programs and continuing education of the staff. 5%

In further response to the director's request for evidence, the petitioner made reference to seven unrelated H1B petitions and stated that they were approved for the same, or similar, position as the offered position.

The duties of the proffered position are similar to those for training and development managers and specialists. In the *Occupational Outlook Handbook*, 2002-03 edition, (*Handbook*) at 61, the Department Of Labor details duties for training positions:

*Training and development managers and specialists* conduct and supervise training and development programs for employees. . . .

*Training specialists* plan, organize, and direct a wide range of training activities. Trainers conduct orientation sessions and arrange on-the-job training for new employees. They help rank-and-file workers maintain and improve their job skills, and possibly prepare for jobs requiring greater skill. They help supervisors improve their interpersonal skills in order to deal effectively with employees. They may set up individualized training plans to strengthen an employee's existing skills or teach new ones. Training specialists in some companies set up leadership or executive development programs among employees in lower level positions. These programs are designed to develop potential and current executives to replace those retiring. Trainers also lead programs to assist employees with transitions due to mergers and acquisitions, as well as technological changes. In government-supported training programs, training specialists function as case managers. They first

assess the training needs of clients, then guide them through the most appropriate training method. After training, clients either may be referred to employer relations representatives or receive job placement assistance.

Planning and program development is an important part of the training specialist's job. In order to identify and assess training needs within the firm, trainers may confer with managers and supervisors or conduct surveys. They also periodically evaluate training effectiveness.

Depending on the size, goals, and nature of the organization, trainers may differ considerably in their responsibilities and in the methods they use. Training methods include on-the-job training; schools in which shop conditions are duplicated for trainees prior to putting them on the shop floor; apprenticeship training; classroom training; and electronic learning, which may involve interactive Internet-based training, multimedia programs, distance learning, satellite training, videos and other computer-aided instructional technologies, simulators, conferences, and workshops.

The *Handbook* further notes that the duties of training managers and specialists vary considerably due to the diversity of duties and levels of responsibility. Entry level positions are usually filled by college graduates. Many employers prefer degrees in human resources, personnel administration, or industrial and labor relations. Others accept graduates with a technical or business background or a well-rounded liberal arts education. *Id.* at 63. It is, therefore, apparent that a degree in a specific specialty is not the minimum requirement for entry into the offered position. A degree in any number of disciplines will suffice. Accordingly, the petitioner has failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to satisfy any of the remaining three regulatory criteria:

First, the petitioner has not shown that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. The petitioner provided 21 job advertisements in support of this proposition. Many of those advertisements were not for similar organizations to the petitioner's, and the job descriptions provided were not of sufficient detail to determine that they were parallel to the offered position. Even if the positions were determined to be parallel positions, however, they would still fail to establish this criterion in that a wide range of degrees is acceptable for the positions. Acceptable degrees listed are: nursing; any

health related field; business; a nursing license with no specific degree requirement; health education; public health; degrees with major course work in journalism, public relations or communications; education; or adult education. A degree requirement in a specific specialty is not required for the offered position.

Furthermore, the duties of the offered position are not so complex or unique that they can be performed only by an individual with a degree, nor is knowledge required to perform the duties usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties listed are common in the industry for trainers/educators.

Finally, the petitioner has not established that it normally requires a degree or its equivalent for the position offered. Even if that were the case, the position would not qualify as specialty occupation because the duties of the position do not involve the theoretical and practical application of a body of highly specialized knowledge. *Cf Defensor v. Meissner*, 201 F. 2d 384 (5<sup>th</sup> Cir. 2000).

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 issue of the beneficiary's qualifications will not be addressed as the proffered position is not a specialty occupation.

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.