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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
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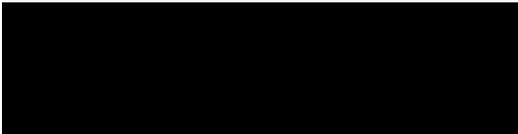
DATE: **JAN 09 2004**

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:



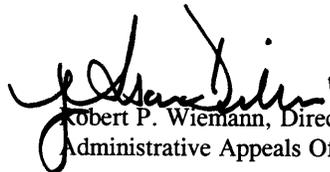
**INSTRUCTIONS:**

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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a skilled nursing facility that currently employs 105 persons and has a gross annual income of \$4,800,000. It seeks to employ the beneficiary as a psychiatric rehabilitative services coordinator (PRSC) - mental health counselor for a period of three years. The director denied the petition for failing to establish that the proffered position qualified as a specialty occupation.

On appeal, counsel submits a brief and additional evidence.

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 one 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 fields 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.

Counsel submitted a number of documents with the Form I-129, of which the following are relevant to the specialty occupation issue: (1) a letter from the petitioner's administrator, with a brochure about the petitioner; and (2) a copy of Illinois Administrative Code (Code) sections on that state's "Reimbursement for Program Costs in Nursing Facilities Providing Psychiatric Rehabilitation Services for Individuals with Mental

Illness Nursing Care Costs."

The administrator's letter asserted, in part, that, as a PRSC-mental health counselor, the beneficiary would:

- Provide stable therapeutic relationship for care facility patients
- Provide and coordinate delivery of residential services programs to patients
- Review individualized treatment plans, and assist patients to understand treatment plan and program schedule
- Monitor patients in areas of self-directed care and overall compliance with treatment plan
- Document patient's progress and needs, and apprise family and other members of staff treatment team of patients' [sic] progress and needs
- Coordinate with other members of staff and treatment team

The Code sections indicate, in part, that: (1) employment of a PRSC is required for state reimbursement for psychiatric rehabilitation services; (2) each healthcare resident's psychiatric rehabilitation services program "must be integrated, coordinated, and monitored by a Psychiatric Rehabilitation Services Coordinator (PRSC)"; (3) delivery of PRSC services "is based upon a full-time equivalent (FTE) ratio of one (1) PRSC to thirty (30) individuals being served"; and (4) PRSC positions require a person who has at least one year experience working with persons with mental illness and "who is a doctor, registered nurse, occupational therapist, psychologist, social worker, or holder of at least a bachelor's degree in a human services field (including, but not limited to, sociology, special education, rehabilitation counseling, and psychology)."

The Code indicates that the PRSC works with the Interdisciplinary Team (IDT) drawn from a facility's doctors, registered nurses, occupational therapists, psychologists, social workers, occupational therapists, and rehabilitation counselors. The IDT and the PRSC work together to ensure the development and implementation of a Comprehensive Program Plan for each patient requiring psychiatric rehabilitation services. Among specific PRSC duties set by the Code are: participation with the IDT in the development of the CPP for each patient; evaluation of discharge potential; review and analysis of each individual's progress, at least every three months, with recommendations to the IDT as appropriate; supervision of the implementation of

each patient's CPP; review of the patient's progress, or lack thereof, in terms of CPP goals; participation with IDT members in CPP revisions; coordination of the staff's delivery of CPPs; data collection oversight; and performance reviews.

The director issued a request for additional evidence, which asserted, in part, that, as the 1996-1997 edition of the Department of Labor's *Occupational Outlook Handbook (Handbook)* indicated that most nursing positions did not require a bachelor's degree in nursing, the petitioner had so far failed to establish that the proffered position as a specialty occupation. Accordingly, the director requested additional evidence that would establish that the proffered position qualified as a specialty occupation under one of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also requested evidence that the beneficiary qualified to serve in a specialty occupation position.

Counsel filed a letter of response with several enclosures, of which the following are relevant to the specialty occupation issue: (1) another copy of Code provisions about reimbursement for psychiatric rehabilitative services, (2) a letter of response from the petitioner's administrator, and (3) another copy of the administrator's letter of support that was submitted with the Form I-129. Counsel asserted that the Code's bachelor's degree requirement is "common to the industry" in nursing facilities that, like the petitioner, expect to be reimbursed by the Illinois Department of Public Aid for psychiatric rehabilitation services rendered to Public Aid patients.

Taking exception to the director's characterization of the proffered position as a nursing one, counsel's letter declared that the PRSC position is "unrelated to the nursing department" and that others besides nurses are hired for that position. Furthermore, counsel maintained that the Code submission "clearly reflects the Illinois Department of Public Aid's intent that the nature of the specific duties enumerated are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree."

According to the administrator's reply letter, the petitioner's facility housed 180 beds, at any given time at least 85 per cent of its patients are on public aid, and at least 85 per cent of its gross income comes from public aid. In this context, the letter stated the importance of the petitioner's compliance with the Code's requirement of one PRSC for every 30 patients. The letter also quoted the Code's stipulation as to who may serve as a PRSC.

In his denial of the petition, the director stated that the petitioner had not established that the proffered position

qualified as a specialty occupation under any one of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The director recounted that his request for additional evidence had informed the petitioner that "the profession of nursing did not qualify as a specialty occupation since a registered nurse may obtain the necessary qualifications in two, three, or four year schools." He also stated that he "had explained that it must be established that the position requires the specialized knowledge attained through higher learning as evidenced by the attainment of a bachelor's degree in a specialized area."

On appeal, counsel contends that the evidence clearly establishes that the proffered position is a specialty occupation. Counsel asserts that entry into the position normally requires a minimum of a bachelor's degree or higher, or equivalent, "in a specialty area - the social and allied health sciences." She also asserts that the degree requirement is common to the industry in parallel positions among similar organizations, and that the nature of the specific duties is so specialized and complex that their performance requires knowledge usually associated with a bachelor's or higher degree.

Counsel submits five exhibits with her brief, which, by exhibit letter are:

- A. A 15-page excerpt from Part 147 of Title 89 of the Illinois Administrative Code, dealing with reimbursement for nursing costs for geriatric facilities, which is submitted for its information about the state's PRSC requirements.
- B. A 9-page letter from Educated Choices, LLC, an education and employment research consulting firm, evaluating the proffered position as a specialty occupation.
- C. A letter from the administrator of Balmoral Nursing Home, attesting to the necessity of PRSCs in order to receive public aid funding and stating that the PRSCs that it hired hold bachelor's degrees in psychology and nursing.
- D. A letter from the director of nursing at Peterson Park Health Care Center, also attesting to the requirement for PRSCs, and stating that its PRSCs held bachelor's degrees in nursing.
- E. A letter from the chief executive officer at Villas of Shannon Nursing Home, further attesting to the requirement for PRSCs, and stating that its PRSCs have bachelor's degrees in the areas of nursing and physical therapy.

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.

Before discussing the evidence of record, it is worth emphasizing this point which is critical to the AAO's decision in this proceeding: Citizenship and Immigration Services (CIS) consistently and correctly interprets "degree" in 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.

Upon full review of the entire record, the AAO has determined that the petitioner has not established that the proffered position is a specialty occupation. As the following discussion will show, the evidence does not satisfy any of the qualifying criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), above.

**I. Baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the particular position.**

**-8 C.F.R. § 214.2 (h) (4) (iii) (A) (1).**

As discussed below, the evidence does not satisfy this criterion's requirement, despite counsel's assertion that the proffered position is a specialty occupation because it "requires for entry a baccalaureate or higher degree in a specialized area: the social sciences or allied health field."

The evidence of record does not present duties for which the need for a bachelor's degree or higher, or the equivalent, is manifestly obvious. Therefore, the duties of the proffered position do not meet the instant criterion.

Next, there is the question of the impact of the Code. The AAO recognizes that, for PRSC positions, the Code mandates a "doctor, registered nurse, occupational therapist, psychologist, social worker, or holder of at least a bachelor's degree in a human services field (including, but not limited to sociology, special education, rehabilitation, counseling, and psychology)." By its very terms, however, the Code allows for the hiring of a person with less than a bachelor's degree, that is, one who is a registered nurse by virtue of an associate's degree in nursing or a hospital's nursing diploma. (The registered nurse aspect will be further discussed in section II of this decision).

The AAO regularly consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for authoritative information about the educational requirements of certain occupations. Here the AAO consulted the 2002-2003 edition.

The AAO has reviewed the *Handbook's* treatment of the occupations that Educated Choices, LLC, and counsel maintains were similar to the proffered position, namely, social workers (pages 160-163), mental health counselors, (pages 152-156), and psychiatric nurses (generally included in the registered nursing occupation at pages 268-270). Review of those *Handbook* sections revealed no information supportive of the appeal. The major duties of social workers and mental health counselors are materially different from and involve more specialized knowledge than the one proffered here. Accordingly, their degree requirements are not transferable to the proffered position. Also, the *Handbook* indicates that registered nurse status attained without a bachelor's degree in nursing can qualify an individual for hire in psychiatric nursing positions, as well as in other direct-care nursing positions.

The AAO notes that the Educated Choices, LLC, evaluation does not present convincing information to support its contention that, for successful performance by a registered nurse, the proffered position requires a bachelor's degree in nursing, when the state that created the PRSC requirement only requires registered nurse status.

As the evidence does not establish the proffered position as one that normally requires a bachelor's degree or higher in a specific specialty, the petitioner has not met the specialty occupation criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

**II. Degree requirement that is common to the industry in parallel positions among similar organizations, or, alternatively, a particular position so complex or unique that it can be performed only by an individual with a degree.**

**-8 C.F.R. § 214.2 (h) (4) (iii) (A) (2).**

A. Degree requirement common to the industry.

Factors often considered by Citizenship and Immigration Services (CIS) when determining the industry standard 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. *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)).

As it mandates the educational and experience requirements for PRSC positions, the Code is conclusive evidence of an industry-wide standard. The critical question is whether the Code's industry-wide standard is a bachelor's or higher degree in a specific specialty. The evidence compels a negative answer. The Code allows for qualification by a Registered Nursing degree, which generally can be attained without a bachelor's degree in nursing. This excerpt from the *Handbook*, at page 169, is conclusive:

There are three major educational paths to registered nursing: associate degree in nursing (A.D.N.), bachelor of science degree in nursing (B.S.N.), and diploma. A.D.N. programs, offered by community and junior colleges, take about 2 to 3 years. About half of the 1,700 RN programs in 2000 were at the A.D.N. level. B.S.N. programs, offered by colleges and universities, take 4 or 5 years.

More than one-third of all programs in 2000 offered degrees at the bachelor's level. Diploma programs, administered in hospitals, last 2 to 3 years. Only a small number of programs offer diploma-level degrees. Generally, licensed graduates of any of the three program types qualify for entry-level positions as staff nurses.

The letters from the three healthcare firms, which attest to hiring for PRSC positions persons with bachelor's degrees in nursing or psychology, do not establish the requisite industry-wide standard. Not only are the letters too few, but they provide no information as to the extent, if any, that specific duties generated the degree requirements.

The AAO has also considered the statement of Educated Choices, LLC, including its assertion that there is a healthcare hiring trend in the United States "toward looking to a variety of health care and human services specialties for professional positions such as the PRSC discussed here." This evaluation service's

information is not sufficient to establish that the trend it mentioned has evolved into an industry-wide requirement for a bachelor's degree or higher in specific specialties related to the proffered position.

B. Degree necessitated by the complexity or uniqueness of the position.

The record fails to establish that duties of the proffered position are either so complex or so unique that only an individual with a bachelor's degree in a specific specialty could perform them. The Code itself is evidence that the state authorities that created the PRSC requirement, defined its attributes, and monitor its implementation in state-funded facilities are satisfied that the position can be satisfactorily filled by a registered nurse who does not hold a bachelor's degree.

Furthermore, the duties themselves, as enumerated and described in the record, do not comprise a position that is especially complex nor unique.

For the reasons discussed above, the director was correct in not granting the petition under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

**III. Degree or its equivalent as the employer's normal requirement for the position.**

**-8 C.F.R. § 214.2 (h) (4) (iii) (A) (3).**

The petitioner presented no evidence on this issue.

**IV. Specific duties of a nature so specialized and complex as to require knowledge usually associated with a baccalaureate or higher degree.-8 C.F.R. § 14.2 (h) (4) (iii) (A) (4).**

In both her brief and her earlier letter of reply to the director's request for additional evidence, counsel refers to the Code as evidence that the proffered position meets this particular criterion. The Code, however, does not persuade the AAO that the duties of the proffered position are so specialized and complex as to require the knowledge usually associated with a bachelor's or higher degree in a specific specialty.

As highlighted in the brief, the Code does require that facilities that include psychiatric rehabilitation have this care "integrated, coordinated, and monitored" by the PRSC. However, the general concepts of integration, coordination, and monitoring do not convey any particular degree of specialization or complexity. Likewise, the PRSC duties outlined in the Code and highlighted in the brief do not establish that the proffered position is usually associated with a least bachelor's degree in a specific specialty. These duties include participation with

physician, social worker (psychiatric or psychological) and nurse members of an Interdisciplinary Team (IT) in development and implementation of the CPP; evaluation of a resident's discharge potential, as part of the IDT's functional assessment; supervision of the CPP, including ongoing review and documentation of the person's progress and suggestions for appropriate revisions to the CPP; coordination of staff delivery of psychiatric rehabilitation; oversight of data collection from IT members; review of IT members' services and performance; timely notice of planned discharges, to including notice of the IDT's discharge plan, to the individual, family, and legal representative; and preparation of a discharge summary of resident's psychiatric status, skills, general health, community-adjustment issues, and future care.

Telling evidence of the lack of any remarkable specialization or complexity is the fact that, as earlier noted, the state has determined that a registered nurse can fill PRSC positions.

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 discussions above, the petitioner has failed to establish any one of the four specialty occupation criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A). 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.