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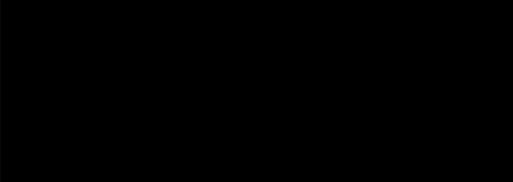
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FILE: LIN 03 113 53198 Office: NEBRASKA SERVICE CENTER Date: **11 13 2004**

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)

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

to Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 health care facility and convalescent center that seeks to employ the beneficiary as a quality assurance coordinator. The petitioner, therefore, endeavors to classify the beneficiary 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 because: (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified to perform the duties of a specialty occupation.

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 quality assurance coordinator. Evidence of the beneficiary's duties includes: the Form I-129; the undated letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: reviewing, analyzing, interpreting, and implementing quality assurance standards and policies and procedures in the facility to ensure quality care to patients; assessing the needs of the department and personnel, and planning and evaluating services; interviewing personnel and patients to evaluate the effectiveness of the quality assurance program; monitoring activities and their outcome to resolve issues and improve services and operations in a cost effective manner; developing a program to audit charts to monitor compliance with regulatory matters and company guidelines; reviewing and evaluating patients' medical records applying utilization review criteria to determine the need for admission and continued stay; compiling statistical data and writing narrative reports and quality assurance policies and procedures; and selecting specific topics for review such as drugs and high volume cases. The petitioner stated that a candidate must possess a bachelor's degree or its equivalent in any healthcare field.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that although the duties of the proffered position seemed a little more complex than those performed by a medical records and health information technician, the duties of the proffered position were not so complex in nature as to require a bachelor's degree. The director also found that the job postings from other companies did not indicate that the position required a specific baccalaureate degree. Finally, the director stated that no evidence in the record showed that the beneficiary had the required knowledge and qualifications to perform the duties of the proffered position.

On appeal, counsel states that the proffered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform its duties. The submitted job advertisements, counsel contends, establishes that the position qualifies as a specialty occupation. Counsel also contends that the denial is inconsistent with other prior decisions and that the director erroneously stated that the petitioner has not historically required a bachelor's degree for the position. Referring to the petitioner's response to the request for evidence, counsel claims that the petitioner demonstrated that numerous firms have required a bachelor's degree for a quality assurance specialist position.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation under 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

In deciding whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the

attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO often consults the *Handbook* to determine the education, training, and experience required to enter into certain occupations.

According to the 2004-2005 edition of the *Handbook*, the offered position would be performed by health information and medical record administrators. These managers, the *Handbook* states, establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers. The *Handbook* further states that most health information and medical record administrators possess a bachelor's degree in health information or medical record administration. Thus, the offered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A) because a bachelor's degree in a specific specialty - health information or medical record administration - is required to perform the duties of the position.

The AAO now turns to the second issue: the beneficiary's qualifications. The director stated in the denial letter that the beneficiary possesses a bachelor of science degree in nursing. According to the director, no evidence in the record established that the beneficiary has the required knowledge and qualifications to perform the duties of the proffered position.

Section 214(i)(2) of the Immigration and Nationality Act (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, a copy of the beneficiary's: (1) bachelor's degree in nursing; (2) transcripts, addendum, and related learning experience documents; (3) professional license issued in the Philippines; (4) certificate of employment; (5) resume; (6) a document from Western Visayas Regional Hospital; and (7) resume. Also contained is a document from the Commission on Graduates of Foreign Nursing Schools (CGFNS). This document merely relays the beneficiary's test score on the CGFNS Qualifying Examination; this examination seems to prepare the test taker for another nursing examination, the NCLEX-RN Examination.

The petitioner is seeking the beneficiary's services as a quality assurance coordinator. Although the petitioner claims that a candidate must possess a bachelor's degree or its equivalent in any healthcare field, the information in the *Handbook* plainly establishes that the duties of the proffered position resemble those performed by health information and medical record administrators - positions that require a bachelor's degree in health information or medical record administration. Thus, to qualify for the proffered position the beneficiary must possess a bachelor's degree in health information or medical record administration.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the proffered position. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. The beneficiary does hold a foreign degree in nursing. However, this degree is not in the required field of study: health information or medical record administration. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The AAO finds that there is no evidence in the record to establish the criteria under 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), (3), and (4).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary's documents contained in the record relate specifically to the field of nursing; none relate to the area of health information or medical record administration. For example, the employment certification from Bacolod Sanitarium and Hospital stated that the beneficiary rendered service as a "nurse trainee," and the beneficiary's own resume describes employment as a "[s]taff [n]urse" and "[r]egistered nurse [t]rainee." Thus, the alien's training and/or work experience did not include the theoretical and practical application of

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

specialized knowledge - health information or medical record administration - required by the proffered position. Finally, there is no evidence that the beneficiary has recognition of expertise.

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.

Beyond the director's decision, it is not clear whether the petitioner named on the petition actually filed the Form I-129 in this case. The Form I-129 was signed by an individual in the capacity of "nurse recruiter" rather than as an employee or representative of the petitioning entity. All of the supporting letters that were provided on behalf of the petitioning entity were signed by the nurse recruiter. If the individual who signed the petition and supporting documentation is the actual employer, then this information should be accurately reflected on the Form I-129, the underlying certified LCA, and the supporting documentation. If this individual is an agent acting on behalf of the petitioner, then there is no evidence in the record that she has been authorized to act for, or in the place of, the employer as its agent. 8 C.F.R. § 214.2(h)(2)(i)(F). It is unclear who the actual employer is. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Accordingly, it is unclear whether the petitioner listed on the Form I-129 meets the definition of a U.S. employer under 8 C.F.R. § 214.2(h)(4)(ii).

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.