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**U.S. Citizenship  
and Immigration  
Services**



DZ

FILE: LIN 03 087 55032 Office: NEBRASKA SERVICE CENTER Date: JUN 02 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.

to 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 a nursing home that seeks to employ the beneficiary as a quality assurance coordinator. The petitioner 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 the proffered position is not a specialty occupation. On appeal, counsel submits a statement.

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.

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 I-129 petition; the petitioner's January 8, 2003 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 assessing the petitioner's level of care and services. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree in nursing for the proffered position.

The director found that the proffered nursing position was not a specialty occupation. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position 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, in part, that the record contains sufficient evidence, such as job advertisements, to demonstrate that the proffered position requires a baccalaureate degree.

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.

First, the AAO does not agree with counsel'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 quality assurance coordinator. 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, Occupational Outlook 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. 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.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty, for the offered position. Third, regarding parallel positions in the petitioner's industry, the petitioner submitted various job postings. 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 advertised positions is a quality manager/clinical educator position. The advertisement, however, does not list any proposed duties. Therefore, it cannot be determined that this position is similar to the proffered position. Another job advertisement is that of a quality improvement manager for a full-service healthcare management company that provides access to over 900 primary and specialty care physicians, more than 19 hospitals, and over 130,000 members of Omni-Care Health Plan, Inc. A third position is that of a “utilization management, operations manager” for a “national leader of healthcare services,” with duties that entail providing liaison and education to providers and representatives. The petitioner also has not demonstrated that the proposed duties of the proffered position are as complex as the duties of the advertised positions. Thus, the advertisements have little relevance.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Beyond the director's decision, it is not clear whether the petitioner 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 and have typed letterhead rather than official stationery from the petitioning entity. If the individual who signed the petitions is the actual employer, then this information should be accurately reflected on the Form I-129 and the underlying certified LCA. 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)(4)(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). For this additional reason, the petition may not be approved.

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.