



U.S. Citizenship
and Immigration
Services

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FILE: LIN 03 091 54964 Office: NEBRASKA SERVICE CENTER

Date: 11/14/16

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:

SELF-REPRESENTED

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

Er Robert P. Wiemann, Director
Administrative Appeals Office

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Administrative Appeals Office
Immigration and Naturalization Service
U.S. Department of Homeland Security

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 company that provides human resource consulting for hospitals. It seeks to employ the beneficiary as a nurse-trainer/supervisor. 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, the petitioner submits a letter.

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 nurse-trainer/supervisor to provide training on open-heart surgical procedures to new nurses in various hospitals in Chicago. Evidence of the beneficiary's duties includes the Form I-129. According to this evidence, the beneficiary would perform duties that entail: training new nurses in modern surgical procedures, open heart surgery and surgical management.

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). The director noted that the Department of Labor's *Occupational Outlook Handbook (Handbook)* indicates that an individual does not need to hold a baccalaureate degree in nursing to enter the occupation.

On appeal, the petitioner states that the applicant is a surgical nurse, rather than a "simple" nurse and has two years of experience in open-heart surgery. In addition, the petitioner states that the law does not discriminate against nurses who hold bachelor's degrees.

In the director's request for evidence, the petitioner was requested to provide evidence the proffered position meets one of the following criteria: 1) a bachelor's degree is normally the minimum requirement for entry in to the position; 2) the degree requirement is common to the industry in parallel positions; 3) the employer normally requires a degree for the position; or 4) the nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree.

The petitioner did not respond to this request in either its response to the request for evidence or on appeal. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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.

Beyond the decision of the director, the AAO notes that the labor condition application that the petitioner submitted in response to the director's request for evidence was dated April 5, 2003, almost three months after the petition was filed. The regulations state, "Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed." 8 C.F.R. § 214.2(h)(4)(B)(I). The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

In addition, it is not clear a bona fide position exists. The petitioner appears to provide workers for hospitals, but there is no evidence on record of a particular position that the beneficiary would fill. Finally, the beneficiary would not be eligible for approval of an H-1B classification as a nurse without providing evidence that she had passed either the NCLEX or the CGFNS exam and evidence of licensure; there is no evidence of this in the record.

LIN 03 091 54964

Page 4

For these additional reasons, 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. The petition is denied.