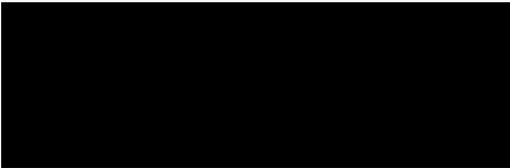




U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



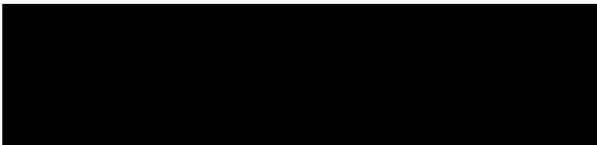
DZ

FILE: EAC 02 235 53783 Office: VERMONT SERVICE CENTER Date: JUN 22 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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and affirmed that decision in a subsequent motion to reopen. 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 healthcare staffing firm 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, and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not 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.

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; (5) the petitioner's motion to reconsider; (6) the director's decision affirming the denial of the petition; and (7) 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 June 28, 2002 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: interpreting and implementing quality assurance standards in a medical facility; interviewing patients and reviewing their records; writing quality assurance policies, procedures, and reports; overseeing personnel engaged in quality assurance review of medical records; interviewing hospital personnel; and selecting specific topics for review. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in nursing, health administration, or public health.

The director found that the proffered position was not a specialty occupation because the job is essentially a nursing position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the duties of the proffered position appear similar to those of certain types of registered nurses. The director pointed out that, according to the Handbook, the minimum requirement for entry into a registered nursing position is 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 that the proffered position is not that of a registered nurse. Counsel asserts that in order to perform the duties of the proffered position, the incumbent must possess specialized clinical and medical knowledge such as that acquired through the pursuit of a bachelor's degree in nursing, health administration, or public health. Counsel also reiterates that a bachelor's degree is an industry standard entry requirement for the quality assurance coordinator position. As counsel contends that the evidence meets the criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the AAO will examine the evidence in light of this standard.

Factors often considered by CIS when determining this criterion 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." See *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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO concurs with the director's assessment to the effect that the job duties parallel the responsibilities of certain registered nursing positions. The petitioner stressed the fact that the instant position involves no patient contact, and although the *Handbook* does not elaborate on administrative nursing positions, 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 nurse supervisors:

Head nurses or nurse supervisors direct nursing activities. 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 the proper delivery of care. They also may see that records are maintained and equipment and supplies are ordered.

The proffered position, although it is titled quality assurance coordinator, appears to resemble a nursing position that requires some skill and knowledge beyond those of an entry-level registered nurse; however, no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for entry into this type of position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for similarly titled positions. 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. Thus, the advertisements have little relevance. The record also does not include any evidence from professional associations regarding an industry standard.

Counsel asserts that the instant position is so complex or unique that it can be performed only by an individual with a degree. The record, however, contains no documentation to support the complexity or uniqueness of the proffered position. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Although CIS acknowledged in its November 27, 2002 policy memorandum on H-1B nurse petitions (nurse memo) that an increasing number of nursing specialties require a higher degree of knowledge and skill than a typical registered nurse or staff nurse position,¹ nothing in the proffered position's job description indicates that the beneficiary would be working in a nursing specialty that requires a higher degree of knowledge or skill. An experienced registered nurse who does not possess a bachelor's degree or its equivalent would be able to successfully execute the duties that the petitioner describes. The petitioner has, thus, not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record does not contain evidence that supports any of the other criteria described at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. Since the director found it appropriate to characterize the instant position as that of a registered nurse, the beneficiary's lack of a nursing license was cause to conclude that the beneficiary was not qualified to perform the duties of the proffered position. Moreover, the director was not persuaded that, although the beneficiary does not possess a permanent license to practice nursing,

¹ Memorandum from Johnny N. Williams, Executive Associate Commissioner, INS Office of Field Operations, *Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses*, HQISD 70/6.2.8-P (November 27, 2002).

the petitioner would expect the beneficiary to evaluate the performance of licensed registered nurses. For this additional reason, the petition will be denied. The director's decision to deny the petition is affirmed.

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.