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**U.S. Citizenship
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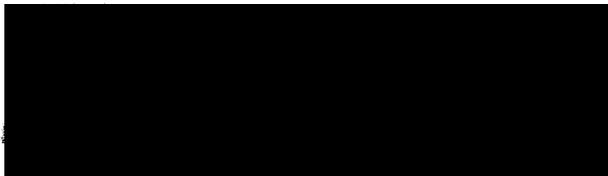


FILE: WAC 02 194 53831 Office: CALIFORNIA SERVICE CENTER Date: **MAR 08 2004**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

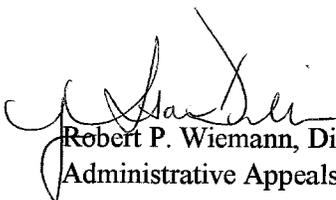
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.


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 staffing agency that seeks to employ the beneficiary as a caseworker. 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 the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 caseworker. Evidence of the beneficiary's duties includes: the Form I-129; the 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: interviewing and evaluating the physical and mental condition of patients to establish a service plan; instituting preventive measures to avoid potential health problems; collaborating with physicians and other health care personnel for the evaluation and treatment of patients and to understand social and emotional factors underlying their health problems; accessing the psychological status of patients; helping patients and their family members to understand, accept, and follow medical recommendations; and recording and reporting significant conditions and reactions and notifying physicians or supervisors about the condition. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in social work, psychology, nursing, medical studies, or a related health 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). The director determined that the duties of the position parallel those of a registered nurse. Citing the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director stated that no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a registered nurse position.

On appeal, counsel contends that the director's denial is arbitrary and vague and has no basis. Counsel submits job descriptions for the positions of caseworker, clinical social worker, and healthcare social worker and states that the beneficiary's duty of providing social and emotional help to families is also performed by these positions. Counsel, furthermore, states that the duties of the proffered position differ from those of a registered nurse: the beneficiary will not assist physicians during treatments and examinations, administer medications, or assist in convalescence and rehabilitation. Counsel, finally, alleges that the director ignored the petitioner's contract with Terraces of Los Gatos.

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.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria 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)).

Counsel's citing the Department of Labor's *Dictionary of Occupational Titles (DOT)* to claim that the proffered position is similar to the positions of caseworker, clinical social worker, and healthcare social worker is unpersuasive. The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and

experience normally required to enter into and advance within an occupation. A review of the *Handbook* discloses that a healthcare social worker helps patients and their families cope with chronic, acute, or terminal illnesses and handle problems that may stand in the way of recovery or rehabilitation. They may organize support groups for families of patients suffering from illnesses and help plan for patients' needs after discharge. Some work on interdisciplinary teams that evaluate certain kinds of patients – geriatric or organ transplant patients, for example. According to the *Handbook*, a clinical social worker offers psychotherapy or counseling and a range of diagnostic services in public agencies, clinics, and private practice.

The AAO finds that the beneficiary's duties are broader in scope than those of a healthcare and clinical social worker. The beneficiary will, for example, record and report significant conditions and reactions and notify physicians or supervisors about the condition, and evaluate the physical and mental conditions of patients. These duties are not performed by healthcare or clinical social workers, but are performed by registered nurses (RN). The *Handbook* describes the RN as an advocate and health educator for patients, families, and communities. When providing direct patient care, RNs observe, assess, and record symptoms, reactions, and progress; assist physicians during treatments and examinations; administer medications; and assist in convalescence and rehabilitation. RNs also develop and manage nursing care plans; instruct patients and their families in proper care; and help individuals and groups take steps to improve or maintain their health. The work setting usually determines the RNs daily job duties.

Counsel claims that the duties of the proffered position do not resemble those of an RN because the beneficiary will not assist physicians during treatments and examinations, administer medications, or assist in convalescence and rehabilitation. Counsel's claim is without value. As the *Handbook* explicitly indicates, the work setting usually determines the RN's daily job duties. Thus, an RN may not be required to administer medication or assist physicians in examinations, but may be required to perform other kinds of direct patient care. Accordingly, the beneficiary's duties more appropriately correspond to those of an RN. The AAO concurs with the director that the *Handbook* explains that a bachelor's degree is not required for an RN position.

Another of counsel's claims is that the petitioner entered into a contract with Terraces of Los Gatos that specifically states that a candidate for a caseworker position must possess a four-year degree. Counsel's claim is without substance. In *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000), the court held that the Immigration and Naturalization Service, now CIS, reasonably interpreted the statute and the regulations when it required the petitioner to show that the entities ultimately employing the foreign nurses require a bachelor's degree for all employees in that position. The court found that the degree requirement should not originate with the employment agency that brought the nurses to the United States for employment with the agency's clients.

Although the record contains an agency service agreement between the petitioner and Terraces of Los Gatos, where the beneficiary will work, the record does not contain a comprehensive description of the beneficiary's proposed duties from an authorized representative of Terraces of Los Gatos. Without such a description, the petitioner has not demonstrated that the work that the beneficiary will perform at Terraces of Los Gatos will qualify as a specialty occupation.

In light of the above discussion, the petitioner, therefore, fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

There is no evidence in the record to establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The petitioner's letter, dated May 17, 2002, stated that it is a common practice in the industry to employ a candidate possessing a bachelor's degree for the proffered position. The submitted contract with Terraces of Los Gatos does not support the petitioner's assertion. In the first place, the petitioning entity's industry, staffing, differs from that of Terraces of Los Gatos, a provider of housing, health care, and supportive services to seniors. Second, as already discussed, the location where the beneficiary will work, Terraces of Los Gatos, did not provide a comprehensive description of the beneficiary's proposed duties. Without such a description, the petitioner has not demonstrated that the work that the beneficiary will perform at Terraces of Los Gatos will qualify as a specialty occupation. Thus, no independent corroborating evidence is in the record to substantiate the petitioner's statement that it is a common practice in the industry to employ a candidate possessing a bachelor's degree for 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). Accordingly, the petitioner fails to establish the second criterion.

No evidence is in the record that would show the petitioner normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Similarly, there is no evidence that would show that the nature of the specific 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. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). As already related, the duties of the proffered position are performed by an RN, and the *Handbook* indicates that a bachelor's degree is not required for an RN position.

As related in the discussion above, 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 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.