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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 02 212 53818 Office: CALIFORNIA SERVICE CENTER Date: MAY 03 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*

for 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 home health care provider that seeks to employ the beneficiary as a health services manager. 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief.

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: (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 health services manager. Evidence of the beneficiary's duties includes: the Form I-129; a supporting letter written by the petitioner; 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: managing the operation of a retirement home, including fiscal and personnel management; planning, directing, and supervising the delivery of healthcare and other services to the

residents; providing training to healthcare workers; and recruiting, hiring, and appraising healthcare personnel. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in nursing (BSN).

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training did not meet the minimum standards for entry into the position as outlined by the Department of Labor's *Occupational Outlook Handbook (Handbook)*. On appeal, counsel states that the beneficiary is qualified for the position because she possesses a BSN and twenty years of experience working as a nurse. Counsel points out that the beneficiary's experience as a chief nurse is especially important in qualifying for the instant position.

The AAO notes that the primary focus of health services managers is on the management of a facility or department. For this reason, as the director rightly highlighted, the *Handbook* states that the standard credential for most generalist positions in this field is a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration. The *Handbook* also notes that a bachelor's degree may be sufficient for certain entry level positions in smaller facilities, and some physicians' offices may substitute on-the-job experience for formal education. As described, however, the instant position is neither an entry-level position nor one with a physician's office. The job description indicates that substantial knowledge of business and fiscal management is required by the position. As the position is depicted in the record, it appears to be the type of post to which the standard credential outlined in the *Handbook* would apply.

Moreover, according to the *Handbook*, all States and the District of Columbia require nursing care facility administrators to have a bachelor's degree, pass a licensing examination, complete a State-approved training program, and pursue continuing education. Since the petitioner requires the beneficiary's services to manage its nursing facility, it appears that the position is subject to the additional requirements regarding licensing, State-approved training, and continuing education.

The documentation on the record does not meet the statutory and regulatory criteria regarding the beneficiary's qualifications to perform the duties of the specialty occupation. The evidence does not show that the beneficiary holds any U.S. degree or that her Filipino degree is equivalent to the degree required by the specialty occupation. The evidence does not show that the beneficiary holds any license to work as a nursing facility administrator. Finally, the evidence does not demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) is examined pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), which provides that 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 beneficiary's Filipino degree has been determined to be equivalent to a U.S. BSN, which is not the degree required by the specialty occupation. Thus, only the fifth criterion above is applicable in the instant case.

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 occupation<sup>1</sup>;
- (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.

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<sup>1</sup> *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).

The documentation does not establish how the beneficiary's education equates to the completion of a master's degree in a field required by the specialty occupation. On appeal, counsel asserts that the beneficiary's work experience qualifies her to work as a health services administrator; however, the record contains no documentation to this effect. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Finally, the record contains 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.

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.