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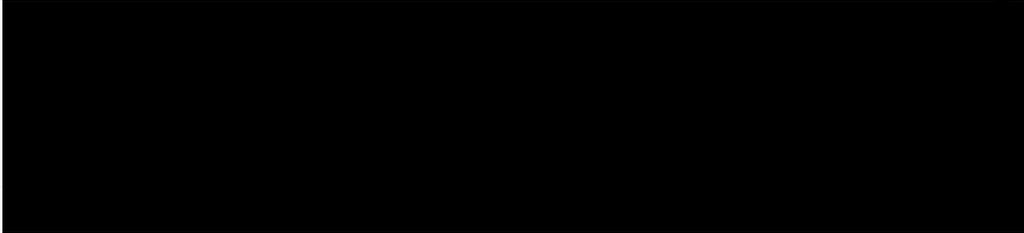
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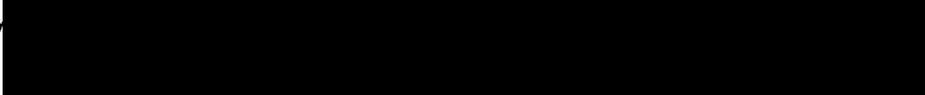


U.S. Citizenship
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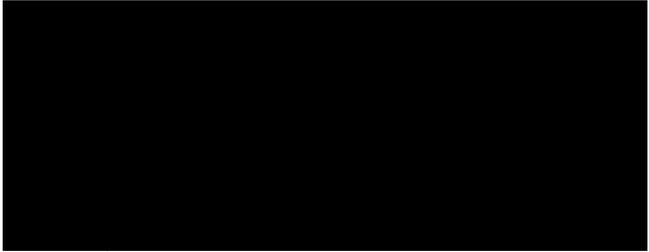
DZ



FILE: WAC 02 044 58572 Office: CALIFORNIA SERVICE CENTER Date: **MAY 06 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.

for 
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 hospital and provider of health care services that seeks to employ the beneficiary as an administrative nurse supervisor. 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. The director noted that the beneficiary does not possess proper licensure to practice as a registered nurse. On appeal, counsel submits a brief and previously submitted evidence.

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 an administrative nurse supervisor. 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 report to the director of nursing and would perform duties that entail, in part: directing, evaluating, and supervising nursing activities for several shift units; planning work schedules and assigning duties to licensed registered nurses; providing orientation, development, and training to nurses and others; participating in the hiring process; visiting patients to observe nurses; establishing and explaining policies and procedures for the nursing department under the direction of the director of nursing; attending meetings; and maintaining public relations. The petitioner stated that a candidate must possess a bachelor's degree in nursing, or its equivalent, and two years of nursing experience.

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). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that the duties of the proffered position resemble those performed by a registered nurse, and that the *Handbook* indicates that a bachelor's degree is not required for this position. The director observed that the beneficiary does not possess a license to practice nursing.

On appeal, counsel states that the proffered position is an administrative nurse supervisor - a specialty occupation. Referring to the Department of Labor's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991), counsel delineates the duties of a registered nurse and explains how the duties of an administrative nurse supervisor are more complex and authoritative than a registered nurse. Counsel, furthermore, states that the *Handbook* mentions that a bachelor's degree is often necessary for administrative positions. Counsel also refers to submitted evidence - a letter from Specialty Hospital of Southern California and Internet recruitment postings - to demonstrate that a bachelor's degree is required for the proffered position. With respect to the beneficiary's qualifications, counsel states that the Acting Assistant Commissioner of the Immigration and Naturalization Service had issued a memorandum that instructed officers that H-1B petitions shall be approved for one year in cases where a beneficiary does not possess a state license because the beneficiary cannot obtain a social security card.

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 considers 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 claims that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's *DOT*, counsel delineates the duties of a registered nurse and explains how the duties of an administrative nurse supervisor are more complex and authoritative than a registered nurse. According to

counsel, the duties of an administrative nurse supervisor, an occupation requiring a bachelor's degree, are more complex and authoritative than a registered nurse.

Counsel's reliance on the *DOT* is misplaced. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. 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.

Upon review of the *Handbook* the AAO finds that it states the following about the training and educational requirements for registered nurse positions:

There are three major educational paths to registered nursing: associate degree in nursing (A.D.N.), bachelor of science degree in nursing (B.S.N.), and diploma. . . . Generally, licensed graduates of any of the three program types 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. 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 resembles a nursing position beyond the entry-level registered nurse, but it does not seem 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.)"¹ The *Handbook* reference is to the classification of medical and health services managers. The *Handbook* states:

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 term “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.

The AAO finds that the proffered position is not analogous to an administrative nurse because the duties of the proffered position, coupled with its place within the petitioner’s hierarchy, are not of a managerial caliber. The petitioner’s organizational charts and the job descriptions for the positions under the beneficiary’s supervision further illustrate that the position is not of upper-level caliber. For example, the beneficiary will supervise registered staff nurses, licensed vocational nurses, and nurse assistant/unit clerks. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for the proffered position given. Consequently, the petitioner fails to establish the first criterion.

To establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations - counsel points to Internet recruitment postings and a letter from Specialty Hospital of Southern California.

The AAO finds that the letter is relevant; nonetheless, without additional probative evidence it is insufficient to establish an industry-wide requirement of a bachelor’s degree in nursing. The postings are deficient in a number of ways. The postings from Providence Medford Medical Center and Saint Francis Hospital fail to mention the duties of their positions; thus, the AAO cannot determine whether they are parallel to the proffered position. Similarly, the brevity of Lancaster General Hospital’s job description makes it impossible to determine whether the positions are parallel. Parkview Medical Center does not require a bachelor’s degree in nursing. The duties of the Glendale Memorial Hospital and Health Center posting differ from the proffered position. The petitioner’s posting - Encino-Tarzana Regional Medical Center (Tenet Facility) - is illegible. Thus, the petitioner fails to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree.

The AAO now turns to 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. There is no evidence in the record that would show that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. As previously discussed, the proffered position is not analogous to an administrative nurse because the duties of the proffered position, coupled with its place within the petitioner’s hierarchy, are not of a managerial caliber. Thus, the petitioner fails to establish the fourth criterion.

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.