



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

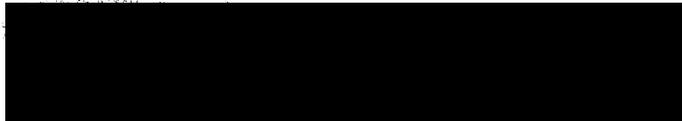
Identifying data deleted to  
prevent clearly unwarranted



DZ

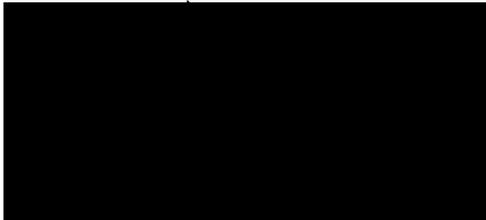
FILE: WAC 02 164 52383 Office: CALIFORNIA SERVICE CENTER Date: MAY 06 2004

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.

*Mari Johnson*

to

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 skilled nursing facility that seeks to employ the beneficiary as a health service coordinator. 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 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 requests for additional evidence; (3) the petitioner's response to the director's requests; (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 service coordinator. Evidence of the beneficiary's duties includes: the Form I-129; the April 11, 2003 letter accompanying the Form I-129; and the petitioner's responses to the director's requests for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: analyzing the utilization of the health care program and admissions and treatment to ensure quality and compliance with reimbursement policies; formulating and negotiating health program contracts with insurance companies; presenting the health program to participating parties and discussing program modifications and health and nutritional issues; evaluating and reporting about services; investigating and resolving claims reimbursement issues; reviewing patient admissions; planning and conducting orientation and training for personnel; organizing and writing nursing procedure manuals and guides for auxiliary nursing personnel; monitoring medical records to schedule services, determine patient review dates, and compile data; overseeing and coordinating activities of staff; conducting workshops to resolve claims processing errors; and participating on committees or review boards. The petitioner stated that a candidate must possess a bachelor's degree, or its equivalent, in the field of health care.

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 an administrative service manager in a non-health area, and that the *Handbook* reports that the educational requirements for these managers vary widely, depending on the organization's size and complexity. In small organizations, experience may be the only requirement to enter into an office manager position. Some office managers may be promoted to an administrative service manager position. In large organizations, each administrative service manager position has its own educational and experience requirements. The director stated that the position's nursing duties would not require a bachelor's degree. The director also mentioned that the DOL's *Dictionary of Occupational Titles* (*DOT*) indicates that a bachelor's degree is not required for the proffered position.

On appeal, counsel states that the proffered position is a specialty occupation. Referring to the *Handbook*, counsel states that the position's duties are not performed by administrative services managers and nurses; however, counsel states that the duties of an administrative nurse - which usually requires a bachelor's degree - are somewhat similar to the position. Counsel asserts that the proffered position is a specialty occupation because it has been assigned an SVP rating of 7 in the Department of Labor's *DOT* (4th Ed., Rev. 1991). Counsel, moreover, claims that the submitted advertisements demonstrate that the industry requires a bachelor's degree for the position. Finally, counsel reports that a health service coordinator position is a new and evolving position in the health service sector, and that the submitted survey indicates that employers generally require applicants with a bachelor's degree to fill new or evolving health service positions.

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 asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the *DOT*. However, 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 DOL 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 DOL'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 an occupation and advance within that occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the *DOT*.

Counsel claims that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). According to counsel, the duties of an administrative nurse - which usually requires a bachelor's degree - are somewhat similar to the position.

The AAO finds counsel's claim unpersuasive. In the first place, as delineated by the petitioner, the proffered position's duties are vague and undefined. Thus, the AAO cannot determine whether a baccalaureate or higher degree or its equivalent in a specialty occupation is the normal minimum requirement for entry into the position. For example, the petitioner's health care program is prominent in the job description; yet, the petitioner never elaborates on its program. Next, although the petitioner's April 11, 2003 letter stated that a candidate must possess a bachelor's degree, or its equivalent, in the field of health care, the document entitled "Job Position Announcement" reported that the petitioner accepts a bachelor's degree in many fields: human resources, business administration, nursing, or healthcare administration. As previously noted, 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. As such, the petitioner's acceptance of a bachelor's degree in diverse fields fails to establish that the degree must be in a specific specialty - a precise and specific course of study that is related directly and closely to the position. The petitioner, therefore, fails to establish the first criterion.

To establish the second criterion - that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations - counsel claims that the submitted postings demonstrate that the industry requires a bachelor's degree for the position.

A thorough review of the postings, however, reveals that they fail to establish that the degree requirement is common to the industry in parallel positions among similar organizations. For example, Banner Health Colorado's posting does not mention the duties of the position. UMASS, a medical school, requires budget analysis and tracking, supervising contractor activity, and preparing and presenting appeal cases; thus, the organization and its position differ from the petitioning entity and the proffered position. Likewise, the duties of the service coordinator for the MRDD program - to develop and implement individual service plans for people with development disabilities in IRAs - differ from the proffered position. Unlike the proffered position's educational requirement, Texana MHMR requires a bachelor's degree in social, behavioral, or

human services. Portal House, a mental health rehabilitation service, expects a candidate to provide managed care assistance to individuals with mental illness, and it requires a bachelor's degree in social work, psychology, rehabilitation counseling, or a related field. As such, the petitioner's industry – a skilled nursing facility – and the proffered position's duties and requirements differ materially from the Portal House posting. Lovelace Health Systems requires a candidate to manage a caseload and provide direction, guidance, and leadership to patient care and case management coordinators. Thus, its duties differ from the proffered position. Kaiser Permanente – a hospital – is dissimilar from the petitioner, and furthermore, Kaiser Permanente's educational requirement of a bachelor's degree - without indicating a specific specialty - also differs from the proffered position. Finally, the health physicist/H&S coordinator's duty to ensure laboratory, radiation, biological, and chemical safety differs dramatically from the proffered position; similarly, its educational requirement of a bachelors of science in industrial hygiene, environmental/occupational health, and health physics differs significantly from the proffered position.

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 in a specific specialty.

Although the petitioners April 11, 2002 letter stated that the petitioner has always required a bachelor's degree in or its equivalent in the field of health care for the proffered position, there is no evidence in the record that would establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent in a specific specialty 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 petitioner's acceptance of a bachelor's degree in diverse fields fails to establish that the degree must be in a specific specialty. Moreover, given the vagueness of the job description, the AAO cannot determine whether 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. The petitioner, therefore, 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.