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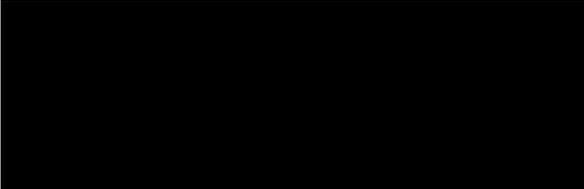
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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship and Immigration Services

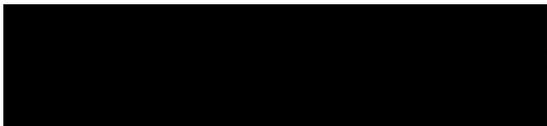


FILE: WAC 02 211 55285 Office: CALIFORNIA SERVICE CENTER Date: MAY 17 2004

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 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 operates a residential care home and seeks to employ the beneficiary as a medical and health service 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 on the bases that the proffered position was not a specialty occupation, and that the beneficiary was not qualified to perform the duties of a specialty occupation. On appeal, counsel states that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 proceedings 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) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a medical and health service manager. Evidence of the beneficiary's duties includes was set forth in the petitioner's letter dated May 30, 2002. According to this evidence the beneficiary would: assist six developmentally disabled residents with behavioral problems who may be violent, verbally abusive, wheelchair bound, blind, and/or deaf; provide direct supervision and special services to developmentally disabled persons; provide on site orientation to caregivers/nurse assistants; provide assistance with residents with prescribed medication; instruct on health and emergency procedures; identify and report special incidents such as accidents, verbal, physical, and other abuse; promote resident's rights, health, safety, and social/physical integration with other residents; assist with visits from community care licensing personnel; provide a wellness program for residents pertaining to nutrition, exercise, safety medications, and positive behavior support; respond to individual resident needs for daily living; implement a program for leisure and recreation; provide assistance and care for residents in daily living activities; provide comfortable living accommodations and privacy for residents, staff, and others who may reside in the facility; provide equipment and supplies necessary for personal care and maintenance of personal hygiene; and report and log any unusual behavior to licensees, social workers, and psychologist. The petitioner states that a bachelor's degree in an unspecified discipline is the minimum requirement for entry into the offered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The petitioner asserts that the proffered position is that of a medical and health service manager. The AAO does not agree. The term "medical and health service manager" encompasses all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. Medical and health service managers include specialists, who are in charge of clinical departments or services, and generalists who manage or help to manage an entire facility. The duties to be performed by the beneficiary include some supervisory responsibilities, but also include duties normally performed by nursing and psychiatric aides who provide care for physically or mentally ill, injured, disabled, or infirm individuals confined to hospitals, nursing, and personal care facilities. Nursing and psychiatric aides are not required to have a baccalaureate level education, or for that matter, even a high school diploma. Medical and health service managers do not perform duties of nursing or psychiatric aides. The beneficiary will not plan, direct, coordinate, and supervise the delivery of healthcare. She will provide general supervisory responsibilities for individuals needing assistance and care in daily living. These responsibilities are not so specialized that one must have a minimum of a bachelor's degree in a specific specialty to perform them. The duties of the proffered position do not meet the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. In support of this assertion the petitioner submitted eight job advertisements. The advertisements are insufficient to establish an industry standard for the offered position. In fact, only two of the advertisements are even remotely related to the proffered position. One requires two years experience **or** a bachelor of science degree in **any** discipline. (Emphasis added.) The other requires a bachelor's degree in an unspecified discipline. The petitioner's evidence is insufficient in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The duties of the offered position consist of general supervisory responsibilities and those routinely provided by nursing and psychiatric aides. They are not so specialized, complex, or unique that they can only be performed by an individual with a degree in a specific specialty, nor is knowledge required to perform them usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4). The petitioner does not assert that it normally requires a degree or its equivalent for the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO will not address the beneficiary's qualifications to perform the duties of a specialty occupation as the petition was denied on another ground.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.