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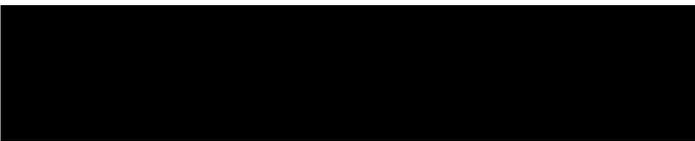
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MAY 19 2004



FILE: LIN 03 132 51602 Office: NEBRASKA SERVICE CENTER Date:

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

← 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 not-for-profit hospital and retirement community that seeks to employ the beneficiary as social services assistant in its nursing center. 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 does not appear to be a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation and that Citizenship and Immigration Services (CIS) erred in its interpretation of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 petitioner's letter of support; (3) the director's request for additional evidence; (4) counsel's letter that responds to the director's request; (5) the director's denial letter; and (6) 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 social services assistant in its nursing center. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and counsel's letters in support of the petition and in response to the director's request for further evidence. According to the job summary in the initial petition, the beneficiary's duties involve compliance with State, Federal and JCAHO regulations; the evaluating, planning and implementing of interventions to meet resident psychosocial and medically related social work needs; working cooperatively with other disciplines for the benefit of the resident and the facility; and conducting inquiry interviews and completing admissions. The job description/performance evaluation form provided by the petitioner detailed specific job duties in eight areas. These performance areas with some specifics are: completing paperwork for admissions to the retirement community; social history/psychosocial assessments of new residents; discharge evaluations and planning for discharges with residents and family members; ongoing services such as counseling resident/family members with regard to any behavioral issues, or roommate problems; management of the monitoring of any behavioral problems for appropriate residents; facilitation of room changes; assistance in getting, finding or monitoring personal items of residents; and assisting or conducting in-services regarding social service issues. The petitioner indicated in its letter of support that the position required a baccalaureate degree in social work or another medically related bachelor's degree from an accredited college.

The director found that the proffered position was not a specialty occupation and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of social and human services assistants. The director determined that the proffered position did not require a baccalaureate degree in a specific specialty for entry into the position. In addition, the director determined that the petitioner's assertion that the baccalaureate degree for the position could be obtained in other medical fields, rather than social work, made the petitioner's requirement for a bachelor's degree in social work less convincing.

On appeal, counsel states that the director misinterpreted the *Handbook* information on social services assistants. According to counsel, the *Handbook* states that baccalaureate degrees are not usually required and the director interpreted this to mean a baccalaureate degree is never required. Counsel asserts that this interpretation is erroneous. In addition, counsel states that the director did not consider the criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) when it denied the petition. Finally, counsel states that the director's interpretation of the petitioner's phrase "medically related area" as meaning anything other than a degree in social work or its equivalent was erroneous.

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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to the proffered position, it appears to be an amalgam position combining the duties of a social services assistant as described by the *Handbook*, with other duties involving psychosocial assessments, and counseling of residents and family members that would indicate a position beyond the entry-level social services assistant classification. Duties such as assisting in room changes and tracking down personal items that are lost or needed clearly do appear to be the duties of an experienced social services assistant with no need for a baccalaureate degree in a specific specialty. The *Handbook* in its description of the training for such workers acknowledges that workers in this profession can be placed in varying jobs based on their educational credentials. For example, the 2004–2005 edition of the *Handbook* states:

While a bachelor's degree usually is not required for entry into this occupation, employers increasingly seek individuals with relevant work experience or education beyond high school. Certificates or associate degrees in subjects such as social work, human services, gerontology, or one of the social or behavioral sciences meet most employers' requirements. Some jobs may require a bachelor's or master's degree in human services or a related field such as counseling, rehabilitation, or social work.

While the *Handbook* indicates that some jobs may require a bachelor's degree in areas such as human services, counseling, rehabilitation, or social work, it does not indicate that a baccalaureate degree in a specific specialty is the minimum requirement to enter the field. With regard to the instant petition, with no breakdown as to how the beneficiary would spend her time in the various duties of the position, it is not possible to gauge whether the position would require any academic credentials beyond the certificate or associate degree in social work. Thus, the *Handbook* does not establish that the position requires a baccalaureate degree in a specific specialty.

With regard to parallel positions in similar nursing center settings, the petitioner submitted no further documentation. The expert opinion provided by Dr. Glenn Cooper, Stanford University, does state that companies seeking to employ a social services assistant require prospective candidates to possess at least a bachelor's degree in social work, medicine or a related field from an accredited institution. However, Dr. Cooper provides no documentary evidence to further substantiate his assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. For example, although the job description mentioned the development of behavior management plans, the record is not clear as to the complexity of such a function, or its uniqueness. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner identified five previous holders of the social services assistant position and submitted copies of four diplomas. The petitioner also explained that the most recent

person hired as a social services assistant had possessed an associate degree in social work, and was found to be under-qualified for the position and was let go at her six month evaluation period. Based on this experience, the petitioner stated that it had decided that a bachelor's degree in social work or in another medically related bachelor's degree would be the minimum education requirement for the position. The petitioner's documentation is viewed as problematic. First, only the diploma for Derick Bailey indicates that he obtained a bachelor of science degree in social work. The other three diplomas do not specify the degree obtained. Second, there were only four diplomas submitted for five employees. Furthermore, the petitioner provided no documentation as to the actual employment of these individuals. Such documentation could include pay records, or employment agreements. To the extent that the petitioner has not provided complete documentation with regard to the criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner has not established this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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. To the extent that they are depicted in the record, the duties of the position appear to involve duties in two distinct areas: 1) duties that utilize social work skills including the counseling of residents and family members and psychosocial assessments of residents, and 2) the provision of services in areas such as lost items, room changes, and assisting in obtaining needed outside services, or adaptive equipment. The record is devoid of any information on the types of residents at the nursing center and their social services needs, the number of residents, or what exactly is involved in doing an assessment of new residents. Furthermore the record is devoid of the percentage of time taken up in counseling activities, as opposed to housekeeping and in-house services. Without more persuasive evidence, the nature of the duties of the proffered position are not viewed as necessarily so specialized or complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in a specific specialty. The petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Beyond the decision of the director, the petitioner did not establish that the beneficiary possesses a baccalaureate degree in a specific specialty directly related to the duties of the position, such as a bachelor's degree in social work or its equivalent. While the original petition stated that either a baccalaureate degree in social work or a medically related degree were required for the position, on appeal, counsel states that the medically related degree phrase actually refers to a degree in social work or its equivalent. With regard to establishing whether the beneficiary has the equivalent of a baccalaureate degree in social work based on her medical studies, the petitioner submitted an expert opinion from Dr. Allen Cooper, Professor of Medicine, Stanford University. In his correspondence, Dr. Cooper asserts that the beneficiary, based on her medical education, is qualified to perform the duties of the proffered position. He states that a degree in medicine, or a related field, requires coursework in areas such as psychiatry, family medicine, public health and related fields. Dr. Cooper further states that medical programs require individuals to take part in research projects that develop skills in analysis of behavior and quantitative analysis of data. Dr. Cooper does not identify any particular medical courses or research projects that the beneficiary has taken or participated in that would establish the equivalency of her medical studies with a specialization in surgery to the required studies for a baccalaureate degree in social work. Thus, the expert opinion of Dr. Cooper is given little weight in this proceeding. Since the beneficiary does not have a degree in

social work and the petitioner has not provided sufficient documentation that her medical education is the equivalent of a degree in social work, the beneficiary does not appear qualified to perform the duties of the proffered position, if it had been determined to be a specialty occupation. However, as the AAO is dismissing the appeal on another ground, it will not examine this issue further.

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.