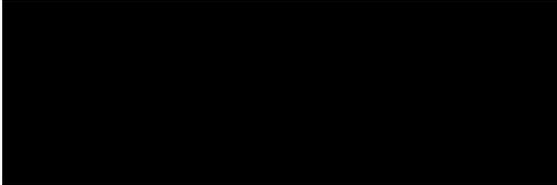




U.S. Citizenship  
and Immigration  
Services

D2



FILE: WAC 03 106 54093 Office: CALIFORNIA SERVICE CENTER Date: NOV 05 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 comprises two licensed resident care facilities. It seeks to employ the beneficiary as a part-time administrator of both facilities. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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.

Section 214(i)(1) of 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 a part-time administrator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's January 22, 2003 letter in support of the petition; and the

petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail assisting with: directing and planning the administration of licensed facilities; overseeing contract nurses; supervising admissions; interviewing and evaluating residents concerning medical history and needs; consulting with medical doctor, psychiatrist, or other specialist concerning treatment plan and making amendments, as directed; overseeing maintenance of and updating case histories, health examination reports, and other medical records; establishing, implementing, and/or modifying facility policies, objectives, procedures, "program and budget"; making recommendations regarding the sanitation and elimination of health hazards; recruiting, overseeing, and terminating staff; and developing and implementing a third facility. In her July 20, 2003 letter, counsel further describes the proposed duties as: "The level of responsibility is general supervision of the two care givers and activities supervisor, as well as of the contract nurses." Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in nursing for the proffered position.

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).

On appeal, counsel states, in part, that the proffered position, which is that of a health service manager, requires a baccalaureate degree, in accordance with information found in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. Counsel submits a survey from other "elderly care facilities with similar number of employees" as supporting documentation, and states further that the record already contains job advertisements to demonstrate that the degree requirement is common to the industry. Counsel additionally states that the record contains a letter from Pamela L. Detrick, Assistant Professor at the Seattle School of Nursing, who states that the proffered position qualifies as a specialty occupation.

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)).

First, the AAO does not agree with the petitioner's assertion that the proffered position would normally require a bachelor's degree in nursing or a related field. The proffered position is that of an administrator. In its *Handbook*, 2004-2005 edition, the DOL states the following about the training and educational requirements for registered nurse positions:

There are three major educational paths to registered nursing: a bachelor's of science degree in nursing (BSN), an associate degree in Nursing (A.D.N.), and a diploma. . . . Generally,

licensed graduates of any of the three types of educational programs 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, primarily in hospitals. 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 that the patients receive proper care. They also may ensure that records are maintained and equipment and supplies are ordered.

The proffered position appears to resemble a nursing position beyond the entry-level registered nurse, but it does not appear to be 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.)" The *Handbook* reference is to the classification of medical and health services managers. The *Handbook* states:

The occupation, 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.

In this case, the petitioner has not demonstrated that the proffered position is an administrative position, which would require a registered nurse with a master's degree in nursing or health administration. Rather, the proposed duties are similar to those of a head nurse or nurse supervisor, as described herein. As such, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Regarding parallel positions in the petitioner's industry, counsel submits a document entitled "SURVEY OF ELDERLY CARE FACILITIES." The document indicates that statistics were gathered from two healthcare facilities – one that has two employees and six residents, and the other that employs independent contractors and has six residents. One facility requires a baccalaureate or equivalent degree for its administrator position, and the other facility requires a baccalaureate degree in health sciences for its assistant administrator position. These statistics from only two healthcare facilities do not establish that a degree is an industry standard. The results of the survey are not representative of the elderly care nursing industry in general. Furthermore, the information in the survey indicates that one of the facilities does not require a degree in a specific specialty.

Accordingly, the information contained in the survey does not persuade the AAO that a baccalaureate degree, or its equivalent, is a common educational credential in the elderly care nursing industry.

The petitioner also submitted three Internet job postings for healthcare-related jobs. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Furthermore, one of the postings does not specify the requirement of a baccalaureate degree in a specific specialty. Another posting specifies the requirement of a valid nursing home administrator's license, in addition to a bachelor's degree in health care administration, management, or related experience. The third posting specifies two years of experience as a licensed administrator or completion of an AIT program, in addition to a bachelor's degree in healthcare administration, business, finance, a clinical specialty, or equivalent long-term care experience. The petitioner has not demonstrated that the proffered position entails the level of responsibility of the positions described in the advertisements. Thus, the advertisements have little relevance.

The record also contains a letter from Pamela L. Detrick, Assistant Professor at the Seattle School of Nursing, who states in part that the proffered position qualifies as a specialty occupation because it requires the minimum of a baccalaureate degree in a health service or related field. She states further that an administrator is a licensed professional. In this case, however, the record contains no evidence that the petitioner requires a licensed professional or that the beneficiary holds an administrator's license. Professor Detrick's letter contains no explanation for this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In view of the foregoing, Professor Detrick's letter is accorded no weight.

The record does not include any evidence from professional associations regarding an industry standard. In addition, no documentation to support the complexity or uniqueness of the proffered position was submitted. 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. On appeal, counsel states that the current administrator holds the equivalent of a bachelor's degree in business administration. The record, however, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the director's decision will not be disturbed.

Beyond the decision of the director, the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of a specialty occupation. The record contains an evaluation from the Foundation for International Services, a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a bachelor's degree in nursing from an accredited U.S. college or university. However, the evaluation is based upon the beneficiary's education, training and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Further, the record indicates that the beneficiary will be performing the duties of a licensed nurse. There is no evidence of record that the beneficiary is licensed as a nurse. For this additional reason, the petition may not be approved.

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.