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U.S. Citizenship  
and Immigration  
Services

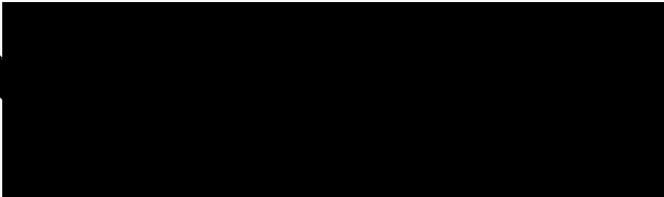


FILE: WAC 02 035 55347 Office: CALIFORNIA SERVICE CENTER Date: **NOV 09 2004**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 multi-specialty outpatient surgical facility that seeks to employ the beneficiary as a quality assurance coordinator. 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 because the beneficiary is not qualified to perform the duties of the specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (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 quality assurance coordinator. The petitioner indicated in an October 10, 2001 letter that it wished to hire the beneficiary because she possessed a bachelor's degree in nursing, and the petitioner requires a strong educational background in a medical field for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the position is most like a health care manager as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The *Handbook* indicates that the position requires a master's degree in health services administration, long-term care administration, health sciences, public health, public administration or business administration, and the beneficiary only possesses a bachelor's degree in nursing. On appeal, counsel states that the position of health services manager requires both familiarity with management principles and knowledge of the specific field of healthcare for which the manager is responsible. Counsel also states that the *Handbook* indicates that a bachelor's degree is adequate preparation for some positions. Counsel asserts that the beneficiary's education included six weeks of study of the principles of management during a clinical program in her nursing studies. Counsel further states that the position does not require a degree in management or experience as a health care manager.

Although the director determined that the position is like a health services manager, a specialty occupation, the AAO disagrees. The position of a quality assurance coordinator is distinct from a health services manager. The beneficiary's qualifications cannot be discussed without first determining whether the position is a specialty occupation.

In reviewing the position description of health services managers in the *Handbook*, the AAO does not concur with the director that the proffered position incorporates elements of the duties of a health services manager. A health services manager functions at a significantly more responsible level than does the quality assurance coordinator as described by the petitioner. The *Handbook* describes a position that incorporates a significant degree of management, specifically stating that health services managers are "individuals who plan, direct, coordinate, and supervise the delivery of healthcare." The *Handbook* indicates that medical and health services managers often are responsible for millions of dollars' worth of facilities and equipment and hundreds of employees. It also states that medical and health services managers have training or experience in both health and management. None of the duties of the proffered position involve the level of managerial skill or responsibility contemplated in the description of a health services manager. It is noted that the petitioner states that it needs a person with an educational background in a medical field, with no mention of managerial training or experience. The director's comments on this issue are withdrawn.

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.

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 petitioner is seeking the beneficiary’s services as a quality assurance coordinator/analyst. Evidence of the beneficiary’s duties includes: the I-129 petition; the petitioner’s October 10, 2001 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, in part: interpreting and implementing quality assurance standards to ensure quality care; reviewing quality assurance standards and studying the existing policies and procedures; interviewing the facility’s personnel and patients to evaluate the effectiveness of the health care workers’ performance; reviewing and evaluating the patients’ medical records and applying quality assurance criteria; compiling statistical data and writing narrative reports summarizing quality assurance findings; applying utilization review criteria and reviewing patient records and personnel engaged in the quality assurance review of medical records; and reviewing the work product of resident nurses and other medical personnel. The petitioner indicated that a qualified candidate for the job would possess a “strong educational background in the medical field.”

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. The *Handbook* does not specifically refer to the proffered position. Therefore, the AAO must rely on other factors in its adjudication.

Regarding parallel positions in the petitioner's industry, on appeal counsel submits three advertisements; none of which appear to be for quality assurance coordinators. Nonetheless, even if the advertised positions and organizations were parallel to the petitioner's, the advertisements do not establish that a bachelor's degree in a specific specialty is required for entry into the field. One listing states that a bachelor's degree is required, but also states that four years of experience may be substituted; one states that a bachelor's degree is preferred, rather than required; and the third states that a bachelor's degree is required and a master's degree is preferred. None of the advertisements state a specific field of study.

The record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. In researching available certifications for quality assurance coordinators on the Internet, the AAO found that the Healthcare Quality Certification Board (HQCB), which grants Certified Professional in Healthcare Quality status, has no minimum educational or experiential requirements to be eligible to take the certification exam.<sup>1</sup> The California Association for Healthcare Quality is associated with the National Association for Healthcare Quality, the parent of the HQCB. Another certifying organization, the American Board of Quality Assurance and Utilization Review Physicians, which certifies professionals in addition to physicians, states that in order to take the exam, an applicant must either hold a current non-restrictive license in his or her field, or, if the profession does not require licensure, the credentials committee may determine eligibility based on experience and education.<sup>2</sup> It appears clear that there is no industry standard regarding educational requirements for entry into the field. Thus, the petitioner has 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 stated in its October 10, 2001 letter in support of the petition that it required a "strong educational background in the medical field." While the petitioner's April 8, 2002 response to the director's request for evidence stated that it required a bachelor's degree in health sciences, it appears that the petitioner changed its requirements. CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

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<sup>1</sup> [www.cphq.org](http://www.cphq.org), accessed October 27, 2004.

<sup>2</sup> [www.abqaurp.org/eligibility.asp](http://www.abqaurp.org/eligibility.asp), accessed October 27, 2004.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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).

The AAO turns now to whether the beneficiary is qualified to perform a specialty occupation. The petitioner established that the beneficiary has the equivalent of a bachelor's degree in nursing, and, therefore, would be qualified for a specialty occupation in that field. The director's comments on this issue are withdrawn.

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.