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U.S. Citizenship
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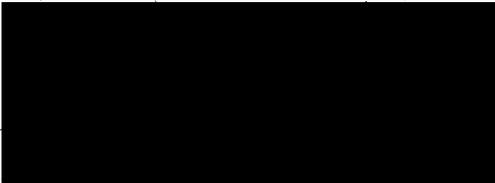


FILE: WAC 03 167 50506 Office: CALIFORNIA SERVICE CENTER Date: OCT 01 2004

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 is a convalescent hospital that seeks to employ the beneficiary as a utilization review coordinator/analyst. 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 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 utilization review coordinator/analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's April 25, 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, in part: coordinating schedules for nursing staff and other healthcare providers; assisting in the planning and drawing of a layout of the care facilities' daily schedules and activities; evaluating, analyzing and assisting in the implementation of quality assurance standards of the facility; reviewing the petitioner's quality assurance standards and studying its existing policies and procedures and evaluating their effectiveness; gathering data and information from various sources; interviewing personnel, staff and patients to prepare a report and make recommendations to management; compiling statistical data and preparing various reports on her findings; performing systematic reporting and disseminating quality assurance findings; reviewing and evaluating patients' medical records to ascertain the medical necessity of services and the appropriate level of care using utilization review criteria; determining whether physicians' documentation regarding the patient's physical condition, test results, scheduled surgery and procedures, and physician care plans justify admission to the hospital; identifying codes and documenting the principal reason for admission and assigning the initial length of stay guidelines; and assisting in providing the petitioner with a comprehensive analysis of its overall healthcare services, and preparing reports outlining her findings and recommendations. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in nursing or a related medical field.

The director found that the proffered position was not a specialty occupation because the job combined the duties of a registered nurse and a medical records and health information technician. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into either a nursing position or a medical records and health information technician was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that 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 that since the specific position of utilization review coordinator analyst does not exist in the *Handbook*, the director cannot use it as a reference. Counsel also states that the position is not like a nurse, since the beneficiary would not be functioning as a nurse. Counsel asserts that the evidence previously submitted establishes that a person with less than a bachelor's degree would not be able to perform the duties of the position. Counsel states that the director has previously approved similar petitions, which should be considered precedent. Finally, counsel avers that the duties of the proffered position are sufficiently complex to establish it 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. While it is true that the *Handbook* does not specifically refer to the proffered position, it is not true that this must result in ignoring the *Handbook* altogether. The duties of a position, rather than the title, are used to analyze whether a job is a specialty occupation. Titles of positions, by themselves, are not reliable indicators of whether positions are specialty occupations. If the duties of a proffered position are similar to the duties of one or more positions described in the *Handbook*, it is appropriate to use it as a reference.

The AAO concurs with the director that many of the duties of the proffered position are similar to those of a nurse, or more specifically, a head nurse. A review of the registered nurse job description in the *Handbook* confirms the accuracy of the director's assessment that many of the job duties of the proffered position parallel the responsibilities of a registered nurse. The *Handbook* indicates that a head nurse plans work schedules and assigns duties to nurses, provides or arranges for training, and may ensure that records are maintained. These are job duties of the proffered position, in addition to such nurse supervisor duties as ensuring quality assurance standards for patients and determining the proper care or services to provide by applying utilization review criteria. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a registered nurse job.

In reviewing the position description of medical records and health information technicians in the *Handbook*, the AAO does not agree with the director that any of the duties of the proffered position are similar to those of a medical records and health information technician. The director's comments on this issue are withdrawn.

Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the positions offered in the prior cases were similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior cases were similar to the proffered position or were approved in error, no such determination may be made without review of the original records in their entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petitions would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See*,

e.g., Matter of Church Scientology International, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Regarding parallel positions in the petitioner's industry, the petitioner submitted one advertisement for a utilization review coordinator/analyst from the petitioner, and one from another organization, which stated that candidates were required to have BSN degrees. There is no evidence, however, to show that the other employer issuing the postings is similar to the petitioner, or that the advertised position is parallel to the instant position. Additionally, submitting information from one other company does not establish an industry standard.

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. 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 record does not contain any evidence of the petitioner's past hiring practices. The petitioner has, thus, not met its burden of proof in this regard.

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).

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 has not demonstrated that the beneficiary holds an unrestricted state license, registration or certification which authorizes her to fully practice nursing and be immediately engaged in nursing in the state of intended employment as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(3). For this additional reason, the petition may not be approved.

While the petitioner indicates that it needs a utilization review coordinator/analyst, as indicated above, many of the duties of the proffered position most closely resemble that of a nurse supervisor or head nurse. The *Handbook* indicates that in all states and the District of Columbia, students must graduate from an approved licensing program and pass a national licensing examination in order to obtain a nursing license. The petitioner may not avoid the requirement of a nursing license by calling the position unit coordinator. The

duties of the position, not the job title, determine the requirement for licensure. There is no evidence of record that the beneficiary is licensed as a nurse in the United States.¹

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.

¹ The AAO notes that counsel for the petitioner is a member of Strong Consolidated Group (SCG), which advertises on the Internet for foreign nurses. The advertisement indicates that its nurses will obtain the H-1B visa and then may delay working upon arrival in the United States in H-1B visa status while taking the required nurse licensing examination. <http://www.strongconsolidatedgroup.com/nurses>; accessed August 11, 2004. Under the cited regulation, the license must be obtained prior to obtaining the visa if the beneficiary will be working as a nurse.