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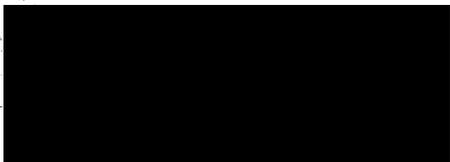


FILE: WAC 03 268 50704 Office: CALIFORNIA SERVICE CENTER Date: OCT 01 2004

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 quality assurance analyst/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/analyst. The petitioner indicated in a September 18, 2003 letter that it wished to hire the beneficiary because she possessed a bachelor's degree in nursing, and the petitioner requires a baccalaureate degree or its equivalent in nursing or a related 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 medical and health services 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 specific position of quality assurance coordinator/analyst does not exist in the *Handbook*, and, therefore, the director cannot use it as a reference. Counsel goes on to state, however, that the *Handbook* states that a bachelor's degree is adequate preparation "for some entry-level positions in smaller facilities and for some entry-level positions at the department level within health care organizations." Counsel asserts that the beneficiary's education and experience have provided her with knowledge of management, administration and research, all of which refute the director's basis for denying the petition. Finally, counsel states that the director has previously approved similar petitions, which should be considered precedent.

For reasons set forth below, the AAO concludes the petitioner does not describe a position similar to a medical and health services manager, but those of a registered nurse. While the petitioner indicates that it needs a quality assurance coordinator/analyst, 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 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).

The AAO now addresses counsel's assertion that this petition must be approved because the service center has approved other similar petitions in the past. The service center director's decision to approve another petition has no bearing on the AAO's decision in this matter, as service center directors' decisions are not binding on this office. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). 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

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.

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 case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition 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).

Beyond the decision of the director, the petitioner has not established the position is a specialty occupation. 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 September 18, 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: collaborating with all nursing staff and other healthcare personnel to review and evaluate the current quality assurance program; assisting in the interpretation of

quality assurance standards for implementation; 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.

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 finds that many of the duties of the proffered position are similar to those of a nurse, rather than a medical and health services director. A review of the registered nurse job description in the *Handbook* confirms that many of the job duties of the proffered position parallel the responsibilities of a registered nurse. The *Handbook* indicates that a head nurse may ensure that records are maintained, ensures quality assurance standards for patients and determines the proper care or services to provide by applying utilization review criteria. These are job duties of the proffered position. 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 health services managers in the *Handbook*, the AAO does not agree 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 analyst/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 a bachelor's degree in nursing, with no mention of managerial training or experience. The director's comments on this issue are withdrawn.

Regarding parallel positions in the petitioner's industry, the petitioner submitted one advertisement for a quality assurance coordinator and one of its own advertisements. The advertisement that was not from the petitioner states that the requirements for the position are a minimum of four years experience in the occupation or four years of experience in any medical related field and a bachelor's degree in any medical field. This does not establish that the occupation requires a bachelor's degree in a specific specialty. On appeal, counsel submits seven advertisements: two are duplicates of the ones previously submitted; one is in the computer industry, rather than in healthcare; and one is for the petitioner. There is no evidence, however, to show that the employers issuing the advertisements are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the advertisements have little relevance.

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. While the petitioner has submitted copies of its advertisements for the proffered position, the record does not contain any evidence of the petitioner's actual 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. The director's comments on this issue are withdrawn.

The AAO notes its authority to affirm decisions, which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within our power to formulate. *Helvering v. Gowran*, 302 U.S. 238 (1937); *Securities Com'n v. Chenery Corp.*, 318 U.S. 86 (1943); and *Chae-Sik Lee v. Kennedy*, 294 F. 2d (D.C. Cir. 1961), *cert. denied*, 368 U.S. 926.

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.