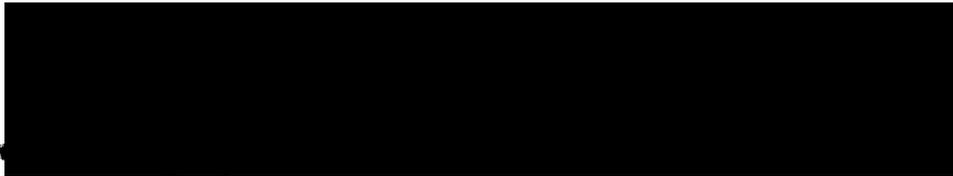




U.S. Citizenship
and Immigration
Services

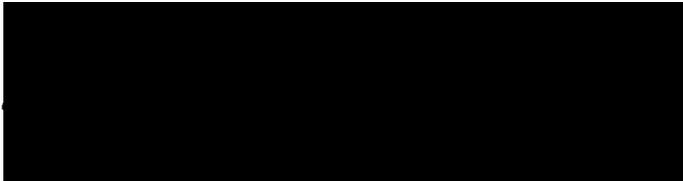


FILE: EAC 03 129 53575 Office: VERMONT SERVICE CENTER Date:

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 hospital that seeks to employ the beneficiary as a team leader/intensive care unit (ICU). 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 team leader of the ICU. Evidence of the beneficiary's duties includes: the Form I-129; the March 17, 2003 letter of support; 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: serving as a clinical resource and as a role model for ICU staff; coordinating and supervising nursing activities in the ICU unit; assessing and identifying potential problems which may impact on the safety of the specific patient population and take appropriate action; maintaining open communication with other high-level nursing/medical staff such as Medical Director, ICU Manager, Clinical Nurse Specialist, etc.; assuming responsibility for quality of nursing care delivered during the shift; maintaining awareness of unit activity and solving problems; assisting the Medical Director in maintaining a unit-based quality improvement program that supports the organizational performance improvement program; assessing unit processes to determine best practices and identifying areas for improvement including efficiency and cost; assembling and assessing data of a specific patient population for identification of actual and potential needs; assisting the Clinical Nurse Specialist in education and orientation of staff to complete competency requirements; conducting unit in-services program for the staff; and performing other duties as may be assigned by the Medical Director. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree and be a graduate of an accredited school of professional nursing.

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). The director noted that the duties of the position were similar to those of a registered nurse and nurse supervisor and, according to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, an individual does not need to hold a baccalaureate degree in nursing to fill a registered nurse position.

On appeal, counsel states that the director ignored the evidence. According to counsel, the petitioner has satisfied two criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that the petitioner established that both the industry standards and its own standards require a bachelor's degree for the proffered position. Counsel also states that administrative precedent supports the proposition that the proffered position is 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. As the director noted, no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a registered nursing job, even for a lead nurse or supervisor.

The petitioner submitted two advertisements to establish standards in parallel positions in the petitioner's industry. One position required a person with a master's degree for a small pediatric ICU, and the other required a bachelor's degree for a chemical dependency facility. 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. Thus, the advertisements have little relevance.

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. There is a letter from the Commonwealth of Virginia, Department of Health Professions, stating that it has no standard minimum education requirement, and that any requirements would be considered employment qualifications to be set by the hiring facility. 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 submitted a list of 12 employees who are team leaders. The list states that each of the team leaders possesses baccalaureate degrees, and also notes the schools from which they graduated. The petitioner does not provide any evidence to support its assertions, however, such as copies of the individuals' diplomas to support this assertion, as requested by the director. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner also submitted a copy of the posting for the proffered position and a position description, both of which state that a bachelor's degree is required. On the petitioner's website, however, the AAO found two current vacancies for RN Team Leaders. One "preferred" a bachelor's degree and the other did not state an educational requirement at all.¹ Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

¹ Accessed at http://www.loudounhospital.org/c_career.cfm on September 16, 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.

While a team leader in the ICU may be required to possess greater skills and experience than an entry-level nurse, it is not clear that those skills and experience could only be acquired by earning a bachelor's degree. The petitioner has not established that the duties could not be performed by an experienced nurse with less than a bachelor's 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.

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.