



U.S. Citizenship
and Immigration
Services

Handwritten initials or mark, possibly "A" and "B" or similar.



FILE: WAC 02 185 53376 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



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 skilled nursing facility. It seeks to employ the beneficiary as a utilization review coordinator, and endeavors to classify her 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 and additional information stating that the proffered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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 proceedings 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) the Form I-290B with 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. Evidence of the beneficiary’s duties was included with the Form I-129 petition and in response to the director’s request for evidence. According to this evidence the beneficiary would essentially review activities related to individual Medicaid program areas for quality assurance and compliance with established state and federal regulations, policies, and laws. The beneficiary would also analyze and resolve claims on hospital lengths of stay that require justification of medical necessity, and plan, develop, and coordinate Medicaid sponsored programs and projects with other agencies to ensure that program goals and objectives are met, service delivery is promoted, and standards and procedural guidelines for health care providers are developed. The petitioner provided a detailed list of duties to be performed by the beneficiary in its letter of April 10, 2002 which was filed in support of its Form I-129 petition. The petitioner requires a minimum of a bachelor’s degree in nursing for entry into the proffered position.

CIS often looks to the Department of Labor’s *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. In the 2004-2005 edition of the *Handbook* at 302, the *Handbook* 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 (ADN), and a diploma. BSN programs, offered by colleges and universities, take about 4 years to complete. . . . ADN programs, offered by community and junior colleges, take about 2 to 3 years to complete. . . . Diploma programs, administered in hospitals, last about 3 years. . . . Generally, licensed graduates of any of the three types of educational programs qualify for entry-level positions as staff nurses. *Id at 302.*

. . . .

. . . [S]ome career paths are open only to nurses with bachelor's or advanced degrees. A bachelor's degree often is necessary for administrative positions and 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 the *Handbook* does note:

Some nurses move into the business side of health care. Their nursing expertise and experience on a healthcare team equip them with the ability to manage ambulatory, acute, home health, and chronic care services. Employers – including hospitals, insurance companies, pharmaceutical manufacturers, and managed care organizations, among others – need RNs for health planning and development, marketing, consulting, policy development, and quality assurance. . . .

The proffered position appears to resemble a nursing position beyond the entry-level registered nurse, but it is not analogous to an administrative nursing position. A recent Service 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.¹ On page 75, the *Handbook* states:

The term “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.

A review of the *Handbook* finds no requirement of a baccalaureate or higher degree in a specialized area for employment in the proffered position. Any of the three career paths noted above are sufficient for the beneficiary to perform the duties associated with the offered position. Experience and good performance can lead to promotion for a registered nurse to more responsible positions, such as assistant head nurse or head nurse/nurse supervisor. Likewise, good performance and experience can equip a nurse to perform the duties of a utilization review coordinator or quality assurance coordinator in the healthcare field. There is no requirement, however, that a nurse, or any other healthcare professional performing the duties of a utilization review coordinator, have a baccalaureate or higher degree or its equivalent as a minimum requirement for entry into that position. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this criterion the petitioner makes reference to the *Enhanced Guide For Occupational Exploration (EGOE)* and an occupational guide from the Virginia Department of Human Resource Management. These references, however, do not establish

¹ Memorandum from Johnny N. Williams, Executive Associate Commissioner, INS Office of Field Operations, Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses, HQISD 70/6.2.8-P (November 27, 2002).

that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. The *EGOE* states merely that a bachelor's degree is the minimum formal education required to enter into the field as a utilization-review coordinator. It does not state that the position requires a degree in any specific specialty. The occupational guide from the Commonwealth of Virginia states that the position requires graduation from an accredited college or university with course work in social services, a medical discipline, or a related field. The guide does not state that a degree from a four-year university is required as opposed to, for example, an associate degree in nursing from an accredited community or junior college. Furthermore, the Virginia reference indicates that a degree in a medical field, or one of the social services qualifies individuals for the position. These fields are not closely related which further indicates that the position does not require a degree in a specific specialty.

The petitioner does not assert that it normally requires a degree or its equivalent for entry into the proffered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not established that the duties of the proffered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty. Nor has it been established that the duties of the offered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4). The duties described are general and routine for utilization review coordinators. A baccalaureate level education in a specific specialty is not required for entry into the position.

It should further be noted that the director's statement concerning the *Dictionary of Occupational Titles (DOT)* SVP rating for the position is inaccurate. The director stated in his decision that the proffered position had an SVP rating of seven, which indicates that the position requires over two years and up to four years of education. The director then stated that, as such, a baccalaureate level education was not common for the proffered position in the industry. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require. A position with an SVP rating of seven may, or may not, qualify as a specialty occupation, depending on the requirements of the particular position.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations. 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.