



U.S. Citizenship
and Immigration
Services



FILE: WAC 03 137 51000 Office: CALIFORNIA SERVICE CENTER Date: 4

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 unit 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 proffered position is not a specialty occupation and the beneficiary is not qualified to perform the proffered position. 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 unit coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's March 15, 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 facility's 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 and assisting in determining the proper care or services to provide to patients applying utilization review criteria; assisting the personnel department in the recruitment, selection and screening process of hiring new nurses; conducting tests on nurse applicants; assisting in the training of new hires; conducting seminars, lectures and continuing education to healthcare providers; 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 is most like a combination of a registered nurse/head nurse and a health services manager. The director determined that the majority of the duties of the proffered position are those of a registered nurse or a head nurse. The director stated that the State Board of Nursing indicates that a registered nurse does not require a bachelor's degree. Regarding the minority of duties that are similar to a health services manager, the director cited the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition and noted that the educational background required varies with the size and type of organization where an individual works. 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 director found that the position is similar to a health services manager and the *Handbook* states that a bachelor's degree is appropriate preparation for entry-level positions in small organizations, that the position is a specialty occupation. Counsel also states that the evidence submitted with the petition and on appeal establishes that the petitioner and its competitors normally require a bachelor's degree for the proffered position.

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 AAO concurs with the director that many of the duties of the proffered position are similar to those of a nurse supervisor or 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 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 unit 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, on appeal, the petitioner submits three advertisements, one of its own for different positions, and two from other healthcare providers. There is no evidence, however, to show that the other employers issuing the 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 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 contain one approval notice for an H-1B petition, but with no information about the beneficiary or the position. The record also contains two job orders authorizing firms to recruit for the proffered position and stating that a bachelor's degree is required. None of this

information, however, reflects the petitioner's actual hiring practices and whether individuals who have previously filled the position of unit coordinator possessed a bachelor's degree in nursing or a related field. 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.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be primarily a health services manager. However, as previously discussed, the AAO does not find that the position does, in fact, equate to a health services manager, and therefore the beneficiary's lack of qualifications as a health services manager are not relevant to the adjudication.

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 unit coordinator, 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.

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.

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