



U.S. Citizenship  
and Immigration  
Services

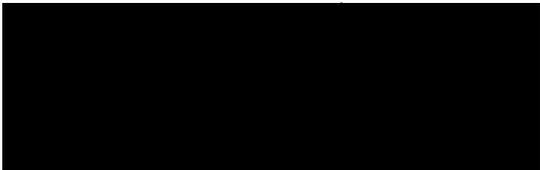


FILE: WAC 03 111 52120 Office: CALIFORNIA SERVICE CENTER Date: **OCT 25 2007**

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

identifying data deleted to  
prevent unauthorized  
invasion of personal privacy

PHOTO COPY

**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 that seeks to employ the beneficiary as a health service 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 proffered position, if classified as a specialty occupation. On appeal, counsel submits a brief and other documentation.

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: (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 health service coordinator. Evidence of the beneficiary's duties includes: the Form I-129; a supporting letter written by the petitioner; 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: interviewing patients to obtain medical histories; maintaining medical records; discussing health care plans with patients and their families; conducting training on topics such as the resolution of claim processing errors; reviewing patient admission applications; and investigating and resolving insurance-related problems. The petitioner requires a baccalaureate degree or its equivalent in a health-related field for the proffered position. The petitioner indicated that it wished to hire the beneficiary because she possessed a Bachelor of Science Degree in Nursing (BSN) and work experience as a registered nurse and assessment and care plan supervisor.

Both the petitioner and the director compared the proffered position to that of a health services manager as outlined in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The director noted that according to the *Handbook*, a master's degree would be the minimum entry requirement for a health services manager, and the beneficiary does not possess a master's degree or its equivalent. On appeal, counsel states that the instant position does not require a master's degree, and the beneficiary is qualified for the position because she possesses a Filipino BSN and several years of experience working as a nurse.

A thorough review of the job duties reveals that the health services manager is not the position most similar to the instant position. Nevertheless, the AAO concurs with the director's assessment that the beneficiary would not be qualified for the position of health services manager, because the beneficiary's education, experience, and training does not meet the minimum standards for entry into that job, as described in the *Handbook*. The AAO notes that the primary focus of health services managers is on the management of a facility or department. For this reason, as the director highlighted, the *Handbook* states that the standard credential for most generalist positions in this field is a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration. The *Handbook* also notes that a bachelor's degree may be sufficient for certain entry level positions in smaller facilities, and some physicians' offices may substitute on-the-job experience for formal education. The instant position, however, is neither an entry-level position, as it includes duties such as training other employees, nor one with a physician's office. Moreover, according to the *Handbook*, all States and the District of Columbia require nursing care facility administrators to have a bachelor's degree, pass a licensing examination, complete a State-approved training program, and pursue continuing education. The record of proceeding does not contain evidence of the beneficiary's passage of a licensing examination for health services managers or completion of a state approved training program.

Unfortunately, the petitioner's various assertions about the position leave much doubt regarding the level of responsibility the position entails, the role of the health service coordinator within the petitioner's organization, and the true nature of the job itself. This vagueness makes it impossible to determine the qualifications necessary to fulfill the job's responsibilities, whether a bachelor's, master's, or nursing degree, or even if a specific license would be required. The petitioner emphasizes that the position does not require a nursing license, because it is not a nursing position; it is solely an administrative job. Yet the petitioner insists that a BSN is a pre-requisite, and the duties listed include communicating with patients and their

families regarding health care matters. The position does not appear to be supervisory in nature, as the job description merely lists other personnel with whom the beneficiary would work "collaboratively."

On appeal, counsel quotes an excerpt from the *Handbook* regarding medical and health services managers to emphasize the petitioner's position that a bachelor's rather than a master's degree is required, but counsel also includes the information in the *Handbook* that indicates that nursing home administrators must obtain additional qualifications such as a license and state-approved training. The evidence does not show that the beneficiary holds any license to work as a nursing facility administrator. Although the record demonstrates that the beneficiary possesses the equivalent of a U.S. BSN, the record is so vague with respect to the position itself, that the AAO cannot compare the requirements of the proffered position to the beneficiary's background in order to ascertain if she is properly qualified to perform the duties. The petitioner has, thus, failed to establish that the beneficiary is qualified to perform the duties of the proffered position, if classified as a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO does not find that the proffered position is a specialty occupation. For this additional reason, the petition may not be approved. 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.

As previously noted, the job description provides little insight into the actual role of the instant position. However, an in-depth review of such duties as listed in the record reveals that the proffered position does not involve the scope or level of responsibility of a health services manager. The beneficiary would not be expected to manage a facility or department or direct operations in a specific area such as finance or human resources. It appears that the focus of the instant position is on liaising between insurance companies, health care staff, and patients, working with patients and their families to make sure they understand treatment programs, and handling various patient-level administrative matters. The instant position combines job duties from different *Handbook* categories, such as health information technician, medical administrative assistant, and nurse. According to the *Handbook*, a bachelor's degree is not a minimum entry requirement for any of these fields. No information in the record indicates that an experienced nurse could not perform the proposed duties. Indeed, the beneficiary is a nurse, and the petitioner finds her to be qualified to perform the job. As noted above, a bachelor's degree is not a minimum entry requirement in the field of nursing.

Neither is the AAO persuaded that the position is a specialty occupation simply because, as the petitioner points out, two other individuals who held the same position previously possessed a BSN. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation, regardless of the petitioner's past hiring practices. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.<sup>1</sup> In this regard, the petitioner fails to establish that the position it is offering to the beneficiary entails the theoretical and practical application of a body of highly specialized knowledge. As the evidence submitted does not establish any of the criteria outlined at 8 C.F.R. § 214.2(h)(4)(iii)(A), the proffered position is not a specialty occupation.

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.

---

<sup>1</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.