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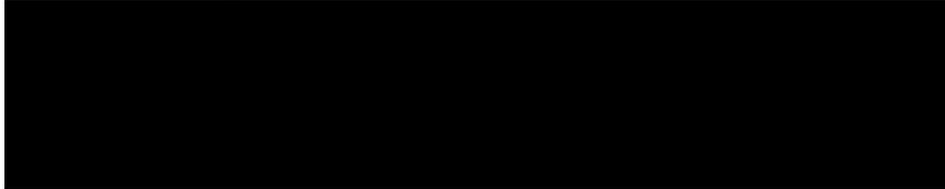
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U.S. Department of Homeland Security
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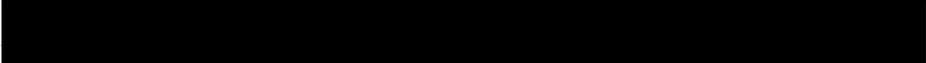


U.S. Citizenship
and Immigration
Services

DZ



FILE: WAC 02 183 52651 Office: CALIFORNIA SERVICE CENTER Date: **SEP 01 2004**

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.

Mari Plerson

to 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 healthcare center. It seeks to employ the beneficiary as an associate administrator, and endeavors to classify him 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 field 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 an associate administrator. Evidence of the beneficiary's duties was included with the I-129 petition and in response to the director's request for evidence. According to this evidence the beneficiary would: interpret, analyze, and implement quality standards for clients pursuant to the petitioner's operations manual and existing contracts; assist in formulating solutions to complaints based on suggestions from clients and patients; coordinate with the human resource department in developing standard policies; monitor each nurse to make sure each has the requisite training, instruction, or continuing education in accordance with the Board of Nursing, and comply with each client's quality standards; review nurse's performance before renewing his or her contract; and implement an effective communication/information system between the client, nurses, and personnel department to monitor, avoid, and eventually eliminate tardiness, absenteeism, and truancy among the staff; and review patients' medical records and analyze the medical care provided. The petitioner states that a bachelor's degree or its equivalent is normally the minimum requirement for entry into the proffered position, but does not specifically state that it requires a minimum of a bachelor's degree in any particular discipline.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by counsel. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those provided by a registered nurse, head nurse or nurse supervisor on the business side of healthcare (quality assurance), not a health services manager as asserted by counsel. Health service managers plan, direct, coordinate, and supervise the delivery of healthcare. They work as specialists in charge of specific clinical departments or services, or as generalists who manage or help to manage an entire facility or system. The beneficiary's proposed duties do not include these responsibilities. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at pages

268 - 269, the Department Of Labor describes in part, the duties of a registered nurse, and head nurse or nurse supervisor:

Registered nurses (RNs) work to promote health, prevent disease, and help patients cope with illness. They are advocates and health educators for patients, families, and communities. When providing direct patient care, they observe, assess, and record symptoms, reactions and progress; assist physicians during treatments and examinations; administer medications; and assist in convalescence and rehabilitation. RNs also develop and manage nursing care plans; instruct patients and their families in proper care; and help individuals and groups take steps to improve or maintain their health. While State laws govern the tasks that RNs may perform, it is usually the work setting that determines their daily job duties.

....

Nursing home nurses manage nursing care for residents with conditions ranging from a fracture to Alzheimer's disease. Although they spend much of their time on administrative and supervisory tasks, RNs also assess resident's health condition, develop treatment plans, supervise licensed practical nurses and nursing aides, and perform difficult procedures such as starting intravenous fluids. . . .

....

Head nurses and nurse supervisors direct nursing activities. They plan work schedules and assign duties to nurses and aides, provide or arrange for training, and visit patients to observe nurses and to ensure proper delivery of care. They also may see that records are maintained and equipment and supplies are ordered.

....

Some nurses move into the business side of healthcare. Their nursing expertise and experience on a healthcare team equip them to manage ambulatory, acute, home health, and chronic care services. Healthcare corporations employ nurses for health planning and development, marketing, and **quality assurance** (Emphasis added)

A review of the *Handbook* finds no requirement of a baccalaureate or higher degree in a specialized area for employment in the proffered position.

There are three major educational paths to registered nursing: associate degree in nursing (A.D.N.), bachelor of science degree in nursing (B.S.N.), and diploma. A.D.N. programs, offered by community and junior colleges, take about 2 to 3 years. About half of the 1,700 RN programs in 2000 were at the A.D.N. level. B.S.N. programs, offered by colleges and universities, take 4 or 5 years. More than one-third of all programs in 2000 offered degrees at the bachelor's level. Diploma programs, administered in hospitals, last 2 to 3 years. Only a small number of programs offer diploma-level degrees. Generally, licensed graduates of any of the three program types qualify for entry-level positions as staff nurses. *Id.* at 269.

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. *Id.* at 269. Likewise, good performance and experience can equip a nurse to perform the duties of an associate administrator/quality assurance in the healthcare field. There is no requirement, however, that a nurse, or any other healthcare professional performing the duties of an associate administrator/quality assurance, have a baccalaureate or higher degree in a specific specialty 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 submitted several job advertisements. The advertisements submitted, however, are insufficient in scope to establish an industry educational standard for the proffered position. Furthermore, the advertisements submitted are not for positions with duties closely related to the position offered to the beneficiary. As such, the advertisements are of little evidentiary value and do not support the petitioner's contention.

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). Furthermore, 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 associate administrators/quality assurance with administrative functions. A baccalaureate level education is not required for entry into the position.

It should further be noted that counsel's assertions regarding the DOT's SVP rating for the offered position are also unpersuasive. 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.

Finally, counsel's reference to the H-1B approval of an unrelated position bearing the same job title will not sustain its burden of proof in these proceedings. This record of proceeding does not contain the entire record of proceedings in the petition referred to by counsel. Accordingly, no comparison of the positions can be made. 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, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as an associate administrator. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher

degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h).

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.