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U.S. Citizenship
and Immigration
Services

D2

[Redacted]

FILE: WAC 02 138 52106 Office: CALIFORNIA SERVICE CENTER Date: **SEP 01 2004**

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:

[Redacted]

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.

Maig Jensen

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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a convalescent facility. It seeks to employ the beneficiary as a health services administrator 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 beneficiary was not qualified to perform the duties of a specialty occupation as the beneficiary lacked required licensure to work as a nursing home administrator. On appeal, counsel asserts that the beneficiary is qualified to perform the duties of a specialty occupation and that the proffered position is not that of a nursing home administrator, but that of a health services manager.

The first issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of 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)(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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) 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, the 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

As previously noted, the director found that the proffered position was that of a nursing home administrator which required a license in the State of California. 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 company's operational manuals and existing contracts; schedule/monitor nurses and healthcare providers to ensure that they have the requisite training, instruction, or continuing education to fully comply with each client's quality standards; implement effective communication/information systems between clients, nurses, and the personnel department to monitor, avoid, and eventually eliminate tardiness, absenteeism, and truancy among staff; oversee employees to ensure compliance with the Board of Registered Nurses requirements, and to ensure that qualifications/experience match the requirements of assigned positions; monitor each employee's license to practice nursing to ensure that the license is up to date and that the continuing education

requirements are met; schedule and organize monthly training for the registered nurses, licensed vocational nurses, and certified nursing assistants to update them with the latest medical breakthroughs, equipment, and procedures; assist management in the formulation of solutions to the complaints and suggestions of clients; and review nurse and staff performance records before negotiating/renewing employment contracts. The petitioner requires a minimum of a bachelor's degree in nursing for entry into the proffered position.

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 with quality assurance responsibilities, not a health services manager as asserted by the petitioner, or a nursing home administrator as asserted by the director. In the *Handbook*, 2002-03, 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.

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 a quality assurance coordinator in the healthcare field. There is no requirement however, that a nurse have a baccalaureate or higher degree, or its equivalent, as a minimum requirement for entry into those positions. The record establishes that the petitioner has the equivalent of a Bachelor of Science degree in nursing from an accredited university in the United States. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The beneficiary is, therefore, amply qualified to perform the duties of the offered position as she possesses a higher education level than is normally required for the position of a nurse in the industry.

The director did not determine whether the proffered position qualifies as a specialty occupation as the petition was denied on another ground. As such, this matter must be remanded to the director to make that determination. The director must afford the petitioner reasonable time to provide evidence pertinent to this issue, and may request any other evidence the director deems necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's March 1, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision commensurate with the directives of this opinion.