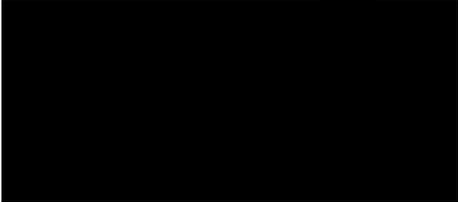




U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 086 53313 Office: CALIFORNIA SERVICE CENTER Date: **SEP 02 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 Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The director of the service center 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 board and care facility that seeks to employ the beneficiary as a medical and health services manager. The petitioner, therefore, 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).

Counsel submitted a timely Form I-290B on May 14, 2003 and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

The director denied the petition because the beneficiary is not qualified to perform the duties of the proposed position. On appeal, counsel states that the petitioner is qualified for the proposed position.

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, in part: (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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a medical and health services manager. The petitioner indicated in its January 21, 2003 letter that the minimum requirement for the proposed position is a baccalaureate degree in business administration, business management, or the equivalent.

Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director found that the duties of the proffered position corresponded to a medical and health services manager, a position requiring a master's degree in health service administration, long term care administration, health services, public health, public administration, or business administration as the standard credential for most generalist positions. The director concluded that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states that the beneficiary is qualified for the position because she possesses a bachelor's degree in business administration, and that this is consistent with the *Handbook's* requirement for a medical and health services manager position.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position.

The record reveals that the beneficiary is a board and care facility, and the petitioner's January 21, 2003 letter stated that it provided adult medical daycare and health services to the elderly. However, the petitioner failed to describe with any specificity the nature of its health facility; for instance, whether it is an intermediate care or nursing facility. Nor did the petitioner state whether it is a licensed facility.

The AAO notes that the evaluation letter from [REDACTED] stated that the proffered position would require a candidate to possess the equivalent of a U.S. bachelor's degree in business administration or a related field, and pass the California Administrator Certification Test. The *Handbook* reports that 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 state of California's *Professional and Business License Handbook* indicates that a nursing home administrator of an institution licensed as a skilled nursing facility or intermediate care facility in the Health and Safety Code needs to possess:

- 1) A Master's degree in nursing home administration or a related health administration field. The Master's program shall have included an internship/residency program of at least 480 hours in a skilled nursing facility or an intermediate care facility; or, 2) a baccalaureate degree and a Program-approved Administrator-in-Training program of at least 1,000 hours; or, 3) ten years of full-time work experience within the immediately preceding fifteen years as a registered nurse in a nursing home and a Program-approved Administrator-in-Training

program of at least 1,000 hours (at least five years of the ten years of work experience shall have been in a supervisory position); or, 4) ten years of full-time work experience within the immediately preceding fifteen years in any department of a nursing home, 60 semester or 90 quarter units of college or university courses, and a Program-approved Administrator-in-Training program of at least 1,000 hours (at least five years of the ten years of work experience shall have been in a supervisory position); or, 5) a current nursing home administrator license in another state and proof of having met the minimum education and licensure requirements which existed in California at the time the applicant was originally licensed in the other state.

According to the evidence in the record of proceeding, the beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. However, the beneficiary does hold a foreign degree determined to be equivalent to a baccalaureate degree from an U.S. college or university in business administration with a specialization in management. The record also contains a letter dated December 19, 2002 from the Administrator, Certification Section of State of California Health and Human Services Agency. This letter stated that the beneficiary passed the Administrator Certification Test; however, the letter further stated that the beneficiary needed to complete the application process for certification by providing additional document. The letter did not indicate whether the beneficiary completed a Program-approved Administrator-in-Training program of at least 1,000 hours. The evidentiary record does not include an Administrator Certificate issued to the beneficiary by the State of California Health and Human Services Agency. The beneficiary therefore does not hold an unrestricted state license, registration, or certification authorizing her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment. Consequently, the petitioner fails to establish that the beneficiary is qualified to perform the duties of the proffered position.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. 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.

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