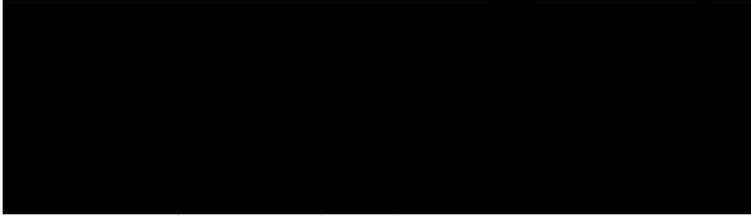




U.S. Citizenship
and Immigration
Services

02



FILE: EAC 02 007 51190 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary



SEP 30 2004

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

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy**

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 nursing home firm that seeks to employ the beneficiary as a nurse manager. 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. Counsel submitted a timely form I-290B on which she indicated that she would send a brief to the AAO within thirty days. As of this date, however, the AAO has not received a brief or other material. Thus, the record is complete.

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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a nurse manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's 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: helping to develop patient care standards; training staff; supervising licensed practical nurses (LPN); preparing brochures of procedures and standards; and handling incoming paperwork. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in nursing (BSN).

The director found that the proffered position was not a specialty occupation because the job is essentially a nursing position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into a registered nursing position is not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On the Form I-290B, counsel states that the proffered position is not that of a staff nurse; it is a supervisory and management position. Counsel also reiterates that a bachelor's degree is an industry standard entry requirement for the nurse manager position. As counsel contends that the evidence meets the criteria described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2), the AAO will examine the evidence in light of this standard.

The regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2) provide that the petitioner can establish that the proffered position is a specialty occupation by showing: 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's assessment to the effect that the job duties parallel the responsibilities of certain registered nursing positions. Counsel stresses the fact that the instant position is supervisory and managerial, and although the *Handbook* does not elaborate on administrative nursing positions, reference is made to two nursing positions within the classification of registered nurse that appear analogous to the proffered position. The *Handbook* states the following about nurse supervisors:

Head nurses or 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 the proper delivery of care. They also may see that records are maintained and equipment and supplies are ordered.

The proffered position appears to resemble a nursing position that requires some skill and knowledge beyond those of an entry-level registered nurse; however, no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for entry into this type of position.

On November 27, 2002, CIS issued a policy memorandum on H-1B nurse petitions (nurse memo) that provides the following commentary on administrative nursing positions: "Nursing Services Administrators are generally supervisory level nurses who hold an RN, and a graduate degree in nursing or health administration. (See Bureau of Labor Statistics, U.S. Dep't of Labor, Occupational Outlook Handbook at 75.)"¹ The *Handbook* reference is to the classification of medical and health services managers, which states:

The term "medical and health services manager" encompasses all individuals who plan, direct, coordinate and supervise the delivery of healthcare. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system.

The instant position is not analogous to this category, as the proposed duties do not encompass the scope or level of responsibility pertaining to the medical and health services manager position. Thus, while some administrative nursing positions may require a bachelor's degree, there is no evidence in the record that the proffered position, a supervisory nursing job, falls within that classification.

Regarding parallel positions in the petitioner's industry, the petitioner submitted several job postings for similarly titled positions. There is no evidence, however, to show that the employers issuing those 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 also does not include any evidence from professional associations regarding an industry standard.

The record contains no documentation to support the complexity or uniqueness of the proffered position. Although CIS acknowledged in its nurse memo that an increasing number of nursing specialties require a higher degree of knowledge and skill than a typical registered staff nurse position, nothing in the proffered position's job description indicates that the beneficiary would be working in a nursing specialty that requires a higher degree of knowledge or skill. An experienced registered nurse who does not possess a bachelor's degree or its equivalent would be able to successfully execute the duties that the petitioner describes. The petitioner has, thus, not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

¹ Memorandum from Johnny N. Williams, Executive Associate Commissioner, INS Office of Field Operations, *Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses*, HQISD 70/6.2.8-P (November 27, 2002).

The record does not contain evidence that supports any of the other criteria described at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, 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 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.