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U.S. Citizenship
and Immigration
Services

02

[Redacted]

FILE: LIN 03 169 51584 Office: NEBRASKA SERVICE CENTER

Date: **SEP 30 2004**

IN RE: Petitioner:
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.

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 home health care agency. It seeks to employ the beneficiary as a quality assurance supervisor, 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 proffered position is not a specialty occupation, and because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional information stating that the proffered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform the duties of a specialty occupation.

The first 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 fields 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 a quality assurance supervisor. Evidence of the beneficiary's duties was included with the Form I-129 petition and in response to the director's request for evidence. According to this evidence the beneficiary would: establish policies, standards, and procedures of quality assurance; review and evaluate patients' medical records including new admission charts, applying established quality assurance standards and procedures; review and correct certification of patient Physical Therapy, Occupational Therapy, and medical social worker documentation; review home health aid documentation; and perform and audit patient assessments, coding prescriptions and patient diagnosis, and review nursing documentation. The petitioner requires a minimum of a bachelor's degree in health sciences, nursing or a related field for entry into the proffered position.

CIS often looks to the Department of Labor's *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. In the 2004-2005 edition of the *Handbook* at 302, the *Handbook* states the following about the training and educational requirements for registered nurse positions:

There are three major educational paths to registered nursing: a bachelor's of science degree in nursing (BSN), an associate degree in Nursing (ADN), and a diploma. . . . Generally, licensed graduates of any of the three types of educational programs qualify for entry-level positions as staff nurses.

....

. . . [S]ome career paths are open only to nurses with bachelor's or advanced degrees. A bachelor's degree often is necessary for administrative positions and is a prerequisite for admission to graduate nursing programs in research, consulting, teaching, or a clinical specialization.

The *Handbook* does not elaborate on administrative nursing positions within this classification, although the *Handbook* does note:

Some nurses move into the business side of health care. Their nursing expertise and experience on a healthcare team equip them with the ability to manage ambulatory, acute, home health, and chronic care services. Employers – including hospitals, insurance companies, pharmaceutical manufacturers, and managed care organizations, among others – need RNs for health planning and development, marketing, consulting, policy development, and quality assurance. . . .

The proffered position appears to resemble a nursing position beyond the entry-level registered nurse, but it is not analogous to an administrative nursing position. A recent Service policy memo 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.)” The *Handbook* reference is to the classification of medical and health services managers.¹ On page 75, the *Handbook* 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.

A review of the *Handbook* finds no requirement of a baccalaureate or higher degree in a specialized area for employment in the proffered position. 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. Likewise, good performance and experience can equip a nurse to perform the duties of a patient care coordinator or quality assurance supervisor in the healthcare field. There is no requirement, however, that a nurse, or any other healthcare professional performing the duties of a quality assurance supervisor, have a baccalaureate or higher degree 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 15 job advertisements in the quality assurance field. Other advertisements were also submitted, but they were duplicates of those included in the 15 herein referenced. Fifteen advertisements are insufficient in scope to establish an industry educational standard. Furthermore, none of the organizations advertising are similar organizations to that of the petitioner, a home health care agency. The advertisements submitted, therefore, do not establish that a degree requirement is common to the industry in parallel positions among similar organizations.

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 petitioner does not assert that it normally requires a degree or its equivalent for the proffered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties of the proffered position are routine for quality assurance nurse coordinators in the industry. They are not so complex or unique that they can only be performed by an individual with a degree in a specific specialty. Nor are they 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 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.

It should further be noted that the petitioner asserts that the director incorrectly found that the position requires a nursing license. The petitioner submitted a letter from the state of Michigan indicating that the position of quality assurance and utilization review supervisor does not require a nursing license. A careful review of the duties of the proffered position, however, indicates that the beneficiary will be performing the duties of a licensed nurse. For example, the beneficiary would perform patient assessments, code prescriptions and patient diagnosis, review nursing documentation, and evaluate the performance of medical professionals such as nurses to ensure the quality of services provided. The AAO finds that these duties go well beyond those described by the Michigan Department of Consumer and Industry Services as not requiring a nursing license, and that a license would be required in this particular instance. As no evidence of licensure was provided, the AAO will not disturb the director's finding that the beneficiary is not qualified to perform the services of the 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 and the appeal shall accordingly be dismissed.

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