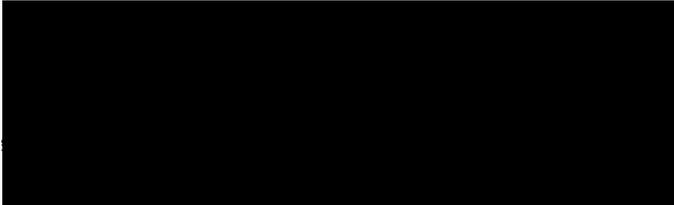


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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: LIN 03 204 51466 Office: NEBRASKA SERVICE CENTER Date: SEP 3 2014

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:



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 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 home health care provider that seeks to employ the beneficiary as a care quality assurance coordinator. 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).

The director denied the petition because: (1) the proffered position is not a specialty occupation; and (2) the beneficiary was not qualified to perform the duties of a specialty occupation. On appeal, counsel submits previously submitted documentation.

The first issue that will be discussed in this proceeding is whether the proffered position qualifies as 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.

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

The petitioner is seeking the beneficiary's services as a care quality assurance specialist. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail reviewing the adequacy of medical staffing charts; scheduling assignments; reviewing questionnaire responses submitted by patients to assist in scheduling for patient care; reviewing billing and assignment procedures for registered nurses; and arranging continuing education. The petitioner stated that a candidate for the proffered position must possess at least a bachelor's degree in nursing or a related field.

The director determined that the proffered position was not a specialty occupation. According to the director, the duties of the proffered position are performed by a head nurse or nursing supervisor as described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), positions that do not require a bachelor's degree. The director mentioned that the *Dictionary of Occupational Titles* (*DOT*) is not a definitive guide in establishing whether an occupation was a profession. The director noted that no evidence established that the degree requirement is common in the industry. According to the director, the petitioner failed to establish that it normally employs persons with a bachelor's degree in nursing because one of its employees has many years of experience but does not hold a bachelor's degree. Finally, the director concluded that if the proffered position had been determined to be a specialty occupation, the beneficiary was not qualified to perform its duties.

On appeal, counsel states that a care quality assurance coordinator is a specialty occupation. Counsel contends that the director misclassified the proffered position as a head nurse based on information in the *Handbook*. According to counsel, the proffered position is subordinate to a head nurse, and is more akin to a health care or nursing administrative position as described in the *DOT*. Counsel contends that CIS previously found medical administrator positions to be of H-1B caliber. Counsel claims that the *Handbook* merely "provides a general, composite description of jobs and cannot be expected to reflect work situations in specific establishments or localities." Consequently, it does not clearly define the proffered position. Counsel asserts that the petitioner normally requires a degree or its equivalent for the proffered position given that nearly all of its care quality assurance specialists hold a bachelor's degree in nursing, and claims that the employee without a bachelor's degree has the equivalent to a bachelor's degree based on experience and education. Counsel narrates the beneficiary's duties and refers to previously submitted evidence to state that 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 bachelor's degree. Finally, counsel emphasizes that the beneficiary is qualified to perform the duties of the proffered position.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum requirement for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The director properly concluded that the duties of the proffered position parallel those of head nurses or nurse supervisors who direct nursing activities. Similar to the beneficiary who reviews the adequacy of medical professional staffing charts, schedules professional assignments, arranges continuing education, and reviews questionnaire responses submitted by patients to assist in establishing schedules for patient care, the *Handbook* describes head nurses or nurse supervisors as planning work schedules and providing or arranging for training. Although the petitioner's June 6, 2003 letter claimed that the beneficiary will not be "supervising the patient care of our customers nor will she be providing any type of direct patient care," this is contradicted by several of the petitioner's statements. For example, in the June 6, 2003 letter, the petitioner claimed that the beneficiary will:

[R]eview the files of our clients, including care-feedback questionnaires proved by our patients, to determine the correlation of treatment as directed by the [d]octors and as determined by our medical professionals.

In the August 5, 2003 letter the petitioner mentioned:

In addition, the [c]are [q]uality [a]ssurance [s]pecialists review the recommendation by the physicians, our primary health care employees, and the patients to ensure that our field nurses are providing the proper care scheduled at the proper times based on physicians' medical diagnosis and prescriptions.

Finally, this letter averred that the quality care assurance specialist:

[M]ust be fully conversant in the requirements of the physician, the duties of the nurse, and the needs of the patient. Quality [c]are [a]ssurance [s]pecialists must coordinate all of these issues to ensure that the patient is receiving proper care by directly interacting with the medical professionals on a daily basis to communicate these issues.

Accordingly, like the head nurse or nurse supervisor who visits patients to observe nurses and to ensure that the patients receive proper care, the beneficiary will ensure “the patient is receiving proper care by directly interacting with the medical professionals on a daily basis to communicate these issues” and will “ensure that our field nurses are providing the proper care scheduled at the proper times.”

The *Handbook* states the following about the training and educational requirements for registered nurse positions:

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. . . . Generally, licensed graduates of any of the three program types 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 is often necessary for administrative positions, and it is a prerequisite for admission to graduate nursing programs in research, consulting, teaching, or a clinical specialization.

Thus, according to the *Handbook*, candidates for the offered position would not require a bachelor's degree for entry into the occupation as required by the first criterion.

Counsel's reliance on the *DOT* to state that the proffered position is akin to a health care or nursing administrative position is not convincing. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum requirement for entry into the occupation. The DOL has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of information contained in the *DOT*.

Another of counsel's claims is that the *Handbook* merely “provides a general, composite description of jobs and cannot be expected to reflect work situations in specific establishments or localities,” and therefore does

not clearly define the proffered position. This passage is read out of context. The relevant passage in the *Handbook* states:

[T]he *Handbook* provides a general, composite description of jobs and cannot be expected to reflect work situations in specific establishments or localities. The *Handbook*, therefore, is not intended and should not be used as a guide for determining wages, hours of work, the right of a particular union to represent workers, appropriate bargaining units, or formal job evaluation systems. Nor should earnings data in the *Handbook* be used to compute future loss of earnings in adjudication proceedings involving work injuries or accidental deaths.

The quoted passage refers to the proper uses of the *Handbook*; it does not suggest that the *Handbook* should not be used to describe duties and educational requirements of particular occupations.

There is no evidence in the record that would establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or would show the proffered position is so complex or unique that it can be performed only by an individual with a degree.

To establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner must establish that it normally requires a degree or its equivalent for the position. Counsel asserts that the petitioner normally requires a degree or its equivalent for the proffered position given that of the five persons employed as care quality assurance specialists only one does not hold a bachelor's degree in nursing, and claims that the employee without a bachelor's degree has the equivalent to a bachelor's degree based on experience and education.

Counsel's assertion is not persuasive. In the first place, educational equivalency is considered by CIS when a specific degree does not exist in an occupational field. *Tapis Int'l vs. INS*, 94 F.Supp. 2d 172 (D. Mass. 2000). The *Handbook* explains that there are degree programs specifically related to nursing. Second, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum requirement for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. As previously discussed, the duties of the

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

proffered position are performed by head nurses or nurse supervisors, positions which do not require a bachelor's degree.

No evidence in the record establishes the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As previously shown, the duties of the proffered position correspond to those performed by head nurses or nurse supervisors, occupations which do not require a bachelor's degree. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, 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 on this ground.

The director also denied the petition because he found that the beneficiary was not qualified to perform the duties of the proffered position if it had been determined to be a specialty occupation.

According to the *Handbook*, all states and the District of Columbia require that students graduate from an approved nursing program and pass a national licensing examination.

Section 214(i)(2) of the Immigration and Nationality Act (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(v)(A), if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien seeking H classification in that occupation must have that license prior to the approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

No evidence in the record indicates that the beneficiary possesses a license to practice as a registered nurse. Consequently, we find that the beneficiary does not qualify to perform the duties of the proffered position.

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.