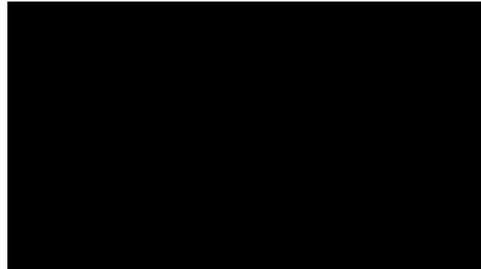




U.S. Citizenship
and Immigration
Services

to
transfer
invasion of personal privacy

PUBLIC COPY

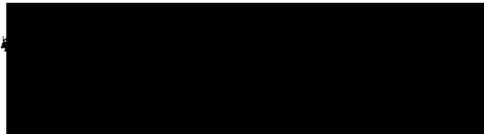


DD

APR 25 2005

FILE: WAC 02 198 51280 Office: CALIFORNIA SERVICE CENTER Date:

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.

Robert P. Wiemann

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 The director's decision shall be withdrawn and the matter remanded to the director to determine whether the beneficiary is qualified to perform the proffered position.

The petitioner provides nursing services. It seeks to employ the beneficiary as a rehabilitation 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 the proffered position is not a specialty occupation. On appeal, counsel states that the proffered position is 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 part-time rehabilitation coordinator. 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 will plan, administer, and direct health rehabilitation programs; consult with medical and professional staff of other departments and personnel from associated health care fields to plan and coordinate joint patient and management objectives; conduct staff conferences and plan training programs; allocate personnel on the basis of work load, space, and equipment; select rehabilitation providers and monitor their service; recommend fees for therapy; negotiate with management regarding organizational and work practice changes; liaise with the treating medical practitioner to establish the initial diagnosis, treatment, prognosis, and return to work requirements; maintain confidential rehabilitation records; prepare the departmental budget and request equipment; ensure prompt evaluation of rehabilitation patients; participate in team evaluation and re-evaluation conferences; assure quality improvement, utilization review, and compliance with regulations and accreditation agencies; monitor treatment programs to ensure that the rehabilitation program is maintained; review medical charts to ensure there is documentation on treatment; may confer with physicians and team members to coordinate programs; select and assign staff and decide on retention, promotion, and demotion; and may arrange internships for student therapists. The petitioner stated that a candidate must possess a bachelor's degree. According to the petitioner, the beneficiary qualifies for the proposed position based on her bachelor's degree in occupational therapy from the Philippine Rehabilitation Institute Foundation, Inc. in the Philippine Islands.

Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director found the proposed position analogous to a medical records and health information technician, an occupation that does not require a baccalaureate degree. The director stated that the petitioner has not shown a past practice of hiring persons with a bachelor's degree in a specialized area or demonstrated that the nature of the beneficiary's duties are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree.

On appeal, counsel contends that the director's conclusion is based on an erroneous reading of the regulations, and that the evidence satisfied the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation.

The proposed position's duties are a combination of those of a medical and health services manager and a physical or occupational therapist. A medical and health services manager is described in the *Handbook* as encompassing "all individuals who plan, direct, coordinate, and supervise the delivery of healthcare." Medical and health services managers direct activities and daily operations in areas such as medical records,

health information, and personnel; establish and implement policies and procedures; and coordinate activities. The *Handbook* states:

Clinical managers have more specific responsibilities than do generalists, and have training or experience in a specific clinical area. For example, directors of physical therapy are experienced physical therapists, and most health information and medical record administrators have a bachelor's degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

Based on this passage, the *Handbook* indicates that a degree in the appropriate field and work experience may be sufficient for entry into the proffered position.

The *Handbook* describes a physical therapist as providing:

services that help restore function, improve mobility, relieve pain, and prevent or limit permanent physical disabilities of patients suffering from injuries or disease. They restore, maintain, and promote overall fitness and health.

The *Handbook* reports that therapists "examine patients' medical histories," "develop treatment plans describing a treatment strategy, its purpose, and its anticipated outcome," and have physical therapist assistants, under their direction and supervision, to assist in "implementing treatment plans with patients." The beneficiary will perform similar duties: she selects rehabilitation, provides and monitors their performance, "liaises with the treating medical practitioner to establish [the] initial diagnosis, treatment, prognosis, and any provisional return to work requirement," "ensures prompt evaluation of rehabilitation patients in order to determine potential rehabilitation needs," "participates in team evaluation and re-evaluation conferences," and "monitors treatment programs to ensure that rehabilitation program regiment is being maintained."

An occupational therapist is described in the *Handbook* as helping "people improve their ability to perform tasks in their daily living and working environments." It states:

They work with individuals who have conditions that are mentally, physically, developmentally, or emotionally disabling. They also help them to develop, recover, or maintain daily living and work skills. Occupational therapists help clients not only to improve their basic motor functions and reasoning abilities, but also to compensate for permanent loss of function. . . .

Occupational therapists assist clients in performing activities of all types, ranging from using a computer to caring for daily needs such as dressing, cooking, and eating. Physical exercises

may be used to increase strength and dexterity, while other activities may be chosen to improve visual acuity and the ability to discern patterns. . . .

...

Therapists help the elderly lead more productive, active, and independent lives through a variety of methods, including the use of adaptive equipment.

The beneficiary will perform duties similar to physical and occupational therapists. The beneficiary will work with others to plan and coordinate joint patient and management objectives; liaise with the treating medical practitioner to establish the initial diagnosis, treatment, prognosis, and return to work requirements; and participate in team evaluation and re-evaluation conferences.

According to the *Handbook*, all states require a physical therapist to pass a licensure examination before they can practice, after graduating from an accredited physical therapist educational program. The *Handbook* also indicates that all states, Puerto Rico, and the District of Columbia regulate the practice of occupational therapy. "To obtain a license, applicants must graduate from an accredited educational program and pass a national certification examination." A bachelor's degree in occupational therapy is the minimum requirement for entry into the field of occupational therapy.

The AAO will now consider whether the beneficiary is qualified to perform the proposed position.

The record contains a copy of the beneficiary's degree in occupational therapy and transcript from the Philippine Rehabilitation Institute Foundation, Inc. Noticeably absent is a credentials evaluation of the beneficiary's education, which is used to determine whether a foreign degree is equivalent to a U.S. baccalaureate or higher degree required by the specialty occupation. Without a credentials evaluation, the petitioner cannot establish that the beneficiary is qualified for the proffered position. In addition, no evidence in the record establishes that the beneficiary possesses licensure to practice as a physical or occupational therapist.

Furthermore, the AAO cannot determine whether the petitioner is an agent, which is what its website (www.nurseconnection.net) suggests. If the petitioner is an agent, it must provide sufficient evidence that it satisfies the regulation at 8 C.F.R. § 214.2(h)(2)(i)(F).

The director's decision shall therefore be withdrawn and this matter remanded to the director who shall determine whether the beneficiary is qualified to perform the duties of the proffered position and the nature of the relationship between the petitioner and the beneficiary. The director must afford the petitioner reasonable time to provide evidence pertinent to these issues, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requires 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 December 18, 2003 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.