

identifying data deleted to
prevent check on warrantless
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

DR

APR 25 2005

[Redacted]

FILE: WAC 03 267 50231 Office: CALIFORNIA SERVICE CENTER Date:

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:

[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

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 nursing home that seeks to employ the beneficiary as an activity specialist. 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 proposed 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 an activity 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 assessing, interviewing, and providing evaluation reports on residents and organizing them into groups; designing activity programs based on a resident's interest and social ability; consulting with professional medical staff; creating activity calendars and interpreting the program to individuals and groups; organizing recreation groups; supervising activities; directing the selection and training of staff and volunteers; assigning work, evaluating staff performance, and recommending action; assisting staff through individual and group conferences in analysis of specific programs; and preparing evaluation reports of programs and making necessary revisions. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in social work or a related area.

The director found the submitted evidence unpersuasive in establishing that the proposed position is a specialty occupation. The director stated that the proposed position resembles a medical and health services manager, as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and further stated that the *Handbook* reports that a medical and health services manager employed in "some other facilities may substitute on-the-job experience for formal education."

On appeal, counsel states that the proposed position is a specialty occupation under the *Dictionary of Occupational Titles* (DOT), and that the proposed position satisfies the education and experience requirements.

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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the DOT. 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 for entry into the occupation. An SVP rating is meant to indicate only the total number of years of

vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the *DOT*.

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 for entry into the occupation as required by the Act.

As described by the petitioner, the AAO finds that the proposed position is similar to a recreational therapist. The *Handbook* states that recreational therapists, also referred to as *therapeutic recreation specialists*:

[P]rovide treatment services and recreation activities to individuals with disabilities or illnesses. Using a variety of techniques, including arts and crafts, animals, sports, games, dance and movement, drama, music, and community outings, therapists treat and maintain the physical, mental, and emotional well-being of their clients. Therapists help individuals reduce depression, stress, and anxiety; recover basic motor functioning and reasoning abilities; build confidence; and socialize effectively so that they can enjoy greater independence, as well as reduce or eliminate the effects of their illness or disability. In addition, therapists help integrate people with disabilities into the community by teaching them how to use community resources and recreational activities.

In acute healthcare settings, such as hospitals and rehabilitation centers, recreational therapists treat and rehabilitate individuals with specific health conditions, usually in conjunction or collaboration with physicians, nurses, psychologists, social workers, and physical and occupational therapists. In long-term and residential care facilities, recreational therapists use leisure activities—especially structured group programs—to improve and maintain their clients' general health and well-being. They also may provide interventions to prevent the client from suffering further medical problems and complications related to illnesses and disabilities.

Recreational therapists assess clients on the basis of information the therapists learn from standardized assessments, observations, medical records, the medical staff, the clients' families, and the clients themselves. They then develop and carry out therapeutic interventions consistent with the clients' needs and interests. For example, clients who are isolated from others or who have limited social skills may be encouraged to play games with others, and right-handed persons with right-side paralysis may be instructed in how to adapt to using their unaffected left side to throw a ball or swing a racket. Recreational therapists may instruct patients in relaxation techniques to reduce stress and tension, stretching and

limbering exercises, proper body mechanics for participation in recreation activities, pacing and energy conservation techniques, and individual as well as team activities. In addition, therapists observe and document a patient's participation, reactions, and progress.

Community-based recreational therapists may work in park and recreation departments, special-education programs for school districts, or programs for older adults and people with disabilities. Included in the last group are programs and facilities such as assisted-living, adult daycare, and substance abuse rehabilitation centers. In these programs, therapists use interventions to develop specific skills, while providing opportunities for exercise, mental stimulation, creativity, and fun.

The beneficiary will "provide a detailed report regarding residents' psychological need[s], social skill[s], and personal interests," design activity programs, organize "recreation groups," and supervise activities. These duties are described in the above excerpt as being performed by a recreational therapist in an "assisted-living" facility.

In describing the educational requires for a recreational therapist, the *Handbook* states:

A bachelor's degree in therapeutic recreation, or in recreation with a concentration in therapeutic recreation, is the usual requirement for entry-level positions. Persons may qualify for paraprofessional positions with an associate degree in therapeutic recreation or a healthcare-related field. An associate degree in recreational therapy; training in art, drama, or music therapy; or qualifying work experience may be sufficient for activity director positions in nursing homes.

The petitioner is a nursing home. Since the *Handbook* reports that an associate degree in certain fields or qualifying work experience is sufficient for activity director positions in nursing homes, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

No evidence in the record establishes the second criterion: that a specific degree requirement is common to the industry in parallel positions among similar organizations or shows that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the proposed position is similar to a recreational therapist, which is an occupation that does not require a bachelor's degree.

No evidence in the record satisfies the third or fourth criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position or establishes 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. Once again, the *Handbook* discloses that the proposed position is similar to a recreational therapist, which is an occupation that does not require a bachelor's degree.

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.

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.