



U.S. Citizenship  
and Immigration  
Services

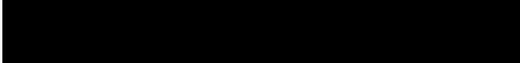
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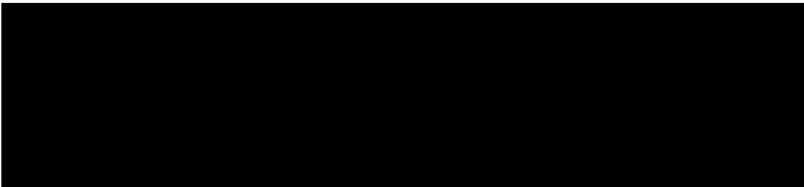
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FILE: WAC 03 265 50259 Office: CALIFORNIA SERVICE CENTER Date: **AUG 10 2005**

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, 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 provides board and care for the mentally disabled. It seeks to employ the beneficiary as a care management 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 submits a brief.

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 management 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 would perform duties that entail coordinating with social workers/case managers for clients' daily progress; compiling statistical data and writing daily narrative progress reports about clients; maintaining an ongoing program evaluation consistent with goals, plans, and regulations; maintaining individual client charts; assisting in coordinating clients' activities and day programs; assisting the licensee in implementing and educating clients about daily living skills; co-facilitating with the licensee intake procedures/interview of incoming clients; coordinating with medical doctors and psychiatrists for clients' regular check-ups; implementing clients' treatment plans according to physician's directions; dispensing clients' medications and other treatments; assisting clients to the laboratory for blood tests; and assisting in client admissions and discharge. The petitioner seeks to employ the beneficiary who possesses, according to American Evaluation Institute, the educational equivalent to a U.S. baccalaureate degree in psychology.

The director stated that the proposed position resembles a psychiatric aide as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that a psychiatric aide does not require a bachelor's degree. The director found the duties of the proposed position generic in nature, providing no detail as to whether they are unique or complex. The director's conclusion, from the evidence in the record, is that the petitioner satisfied none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proposed position is not similar to a psychiatric aide as that occupation is depicted in the *Handbook*. Counsel asserts that the beneficiary's job "involves the work of a trained psychologist." Counsel states that the proposed position is similar to a psychologist that studies and analyzes the psychological conditions of patients then provides reports about them to facility owners and other professionals to ensure the patients' well-being. According to counsel, because the proposed position requires the services of a trained psychologist, it requires a bachelor's degree in psychology. Some of the petitioner's employees provide psychiatric aide services, counsel states, but this is not true of the proposed 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel's assertion that the proposed position is analogous to a psychologist is not persuasive. Many of the proposed duties are depicted in very general terms that do not relate the duties to specifically described tasks so as to demonstrate that the beneficiary would have to apply at least a baccalaureate level of knowledge in psychology. For example, these duties lack specificity: maintaining individual client charts; maintaining an ongoing program evaluation that is consistent with goals, plans, and regulations; compiling statistical data; implementing treatment plans according to physicians' directions; and dispensing clients' medications and other treatments. No description is given of an "ongoing program evaluation"; what "maintaining" client charts entails; or explains the "statistical data" that the beneficiary will compile. Treatment plans that the beneficiary will implement according to physicians' directions are not described; nor does the petitioner elaborate on what is involved in dispensing medications and other treatments.

Notwithstanding the shortcomings of the proposed job description, the job duties that are sufficiently delineated mirror those of a psychiatric aide, which is an occupation that does not require a bachelor's degree. The AAO sets forth here the *Handbook's* depiction of psychiatric aides:

*Psychiatric aides*, also known as mental health assistants or psychiatric nursing assistants, care for mentally impaired or emotionally disturbed individuals. They work under a team that may include psychiatrists, psychologists, psychiatric nurses, social workers, and therapists. In addition to helping patients dress, bathe, groom, and eat, psychiatric aides socialize with them and lead them in educational and recreational activities. Psychiatric aides may play games such as cards with the patients, watch television with them, or participate in group activities, such as sports or field trips. They observe patients and report any physical or behavioral signs that might be important for the professional staff to know. They accompany patients to and from examinations and treatment. Because they have such close contact with patients, psychiatric aides can have a great deal of influence on their patients' outlook and treatment.

The proposed job duties are not sufficiently distinguishable from those of a psychiatric aide. For example, the beneficiary will coordinate with social workers/case managers for clients' daily progress, and coordinate with medical doctors and psychiatrists for patients' regular check-ups. This is similar to the psychiatric aide that works under a team that includes social workers, therapists, and psychiatrists. The beneficiary will write daily narrative progress reports about clients. Likewise, psychiatric aides observe patients and report physical or behavioral signs to professional staff. The beneficiary will assist in coordinating clients' activities and day

programs; psychiatric aides socialize with patients and lead them in educational and recreational activities. The beneficiary will educate clients about daily living skills; psychiatric aides help patients dress, bathe, groom, and eat. The beneficiary will assist clients to laboratory for blood tests; psychiatric aides accompany patients to and from examinations and treatment. Although counsel claims that the beneficiary's assistance relates to mentally preparing the client for blood tests, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO's conclusion, from the various pieces of evidence to which it has referred, is that the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submits no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier in this decision, those duties of the proposed position which are described with specificity correspond to those of a psychiatric aide, which is an occupation that the *Handbook* reveals does not require a baccalaureate degree. By describing some of the duties in general terms, the petitioner fails to demonstrate the complexity or uniqueness of the proposed position.

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In this decision the AAO has already conveyed that some of the proposed duties resemble those of a psychiatric aide while others lack specificity. The duties described in general terms fail to demonstrate that their nature is so specialized and complex, requiring knowledge that is usually associated with the attainment of a baccalaureate or higher degree. Accordingly, 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 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.