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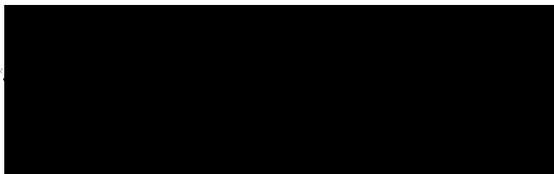
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FILE: WAC 03 181 51955 Office: CALIFORNIA SERVICE CENTER Date: **AUG 22 2005**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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 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 corporation that owns and operates two intermediate care facilities for developmentally disabled people. In order to employ the beneficiary as a care plan coordinator at one of the facilities, the petitioner 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 on the basis that the petitioner had failed to establish that the beneficiary is qualified to perform the proffered position. The director found that the proposed duties “reflect the duties of Nursing Home Nurse/Head Nurse Supervisor” as listed in the 2002-2003 edition of the Department of Labor’s *Occupational Outlook Handbook (Handbook)*. The director determined that performance of the proffered position “requires a nursing license, a bachelor’s or higher degree in nursing and extensive experience in the field of nursing administration.” However, the director found that the beneficiary only met the position’s degree requirement for the equivalent:

The beneficiary, however, has only the following education/experience: A Bachelor of Science in Nursing from Arellano University, Manila, Philippines conferred in March 1996 and has held the position “Company Nurse” from January, 1998 to February, 2000. The beneficiary has had little post-graduate experience as a Nurse, and has no proven experience or training for the proffered position (Nursing Administration). As such, the beneficiary has no expertise in the specialty through progressively responsible positions directly related to the specialty. The beneficiary does not meet any of the preceding criteria to qualify to perform services in the specialty occupation.

According to counsel, the director erred by mischaracterizing the proffered position and its performance requirements. Counsel contends that the petitioner is actually proffering a health services manager position in a small healthcare facility, and that the beneficiary’s nursing degree therefore is sufficient to qualify her to perform the duties of the position. Counsel also asserts that the position does not require a nursing license.

The director was correct in denying the petition. The AAO bases this determination on the basis of the entire record of proceeding before it, including: (1) the petitioner’s Form I-129 and supporting documentation; (2) the director’s request for additional evidence (RFE); (3) the material submitted in response to the RFE; (4) the director’s denial letter; and (5) the Form I-290B and counsel’s brief. The AAO agrees with counsel that the director erred in finding that the qualifications for performance of the proffered position include experience in nursing administration. However, the director was correct in finding that the beneficiary does not possess the licensure required for the position. Accordingly, the director’s decision shall not be disturbed.

Section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A), 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.” Pursuant to 8 C.F.R. § 214.2(h)(v)(A), if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C

nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation. The regulations at 8 C.F.R. §§ 214.2(h)(v)(B) and (C) address situations where the relevant jurisdiction allows temporary licensure or limited practice under the supervision of a properly licensed person.

The Form I-129 provides this general description of the proposed duties:

[The beneficiary] shall be in direct contact with physicians and other healthcare professionals (such as physical, occupational, and speech therapists) in designing and developing a care plan for resident patient[s]. In accordance with the designed care plan, she shall assign the appropriate nurse aide and health care professional to the patient and sees [sic] to it that the planned care plan is followed. She shall [ellipsis] planned medical and nursing regimes are followed. She shall carefully plan the duties and tasks of each nurse, aide and healthcare personnel. She shall regularly review and examine the care plan methods, strategies, and techniques being implemented by [the] petitioner's workers so that the plans can be improved, enriched, and made to adapt to a particular patient. She shall ensure that records, equipment and supplies are being maintained properly and that they are adequate and sufficient. The beneficiary shall spend approximately 25% of her time contacting, coordinating, and discussing with physicians, health care professionals and patients about the respective care plans of patients. She spends 50% of her time closely monitoring and supervising health care staff and workers with health care or nursing academic backgrounds in the implementation of the care plans. She may be required sometimes to demonstrate how to take care [of] or administer treatment to patients herself so that the other workers would learn from her. The other 20% is spent on studying and analyzing the care plan methods, techniques, and results, so that these could be refined according to the needs of the patient. She then meets with case workers or health care professionals on improving care plan techniques. The remaining 5% is spent on corresponding to various health care professionals on the status of each patient and determining whether medical records are intact. She shall also assume responsibility for determining whether equipment and supplies are sufficient for delivery of care.

The above description states that the proposed duties include "demonstrate[ing] how to take care [of] or administer treatment to patients herself so that the other workers would learn from her," and the description, as well as the petitioner's organizational chart, indicates that "the workers" would include nurses. As the beneficiary's duties include demonstrating nursing care and treatment of patients, the director correctly determined both that the proffered position is a nursing position, and that it requires licensure.<sup>1</sup> As there is no evidence of record that the beneficiary possessed the requisite license when the petition was filed, the appeal will be dismissed.

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<sup>1</sup> According to the 2004-2005 edition of the *Handbook*, at page 302, all states and the District of Columbia require licensure for the practice of nursing.

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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. Accordingly, the appeal will be dismissed.

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