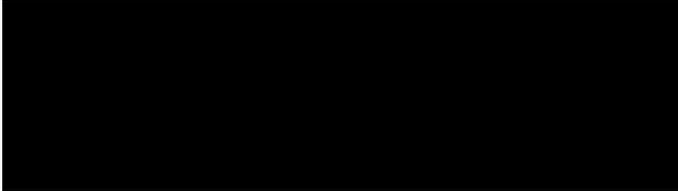


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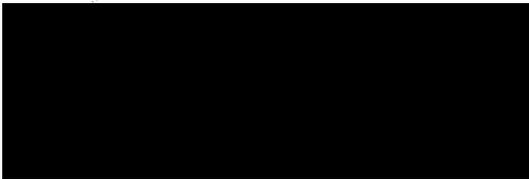
FILE: WAC 04 209 53866 Office: CALIFORNIA SERVICE CENTER Date: DEC 01 2005

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 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 hospital and seeks to employ the beneficiary as a registered nurse. The petitioner 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 does not qualify as a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the Form I-129 and supporting documentation; (2) the director’s denial letter; and (3) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a registered nurse. Evidence of the beneficiary’s duties was set forth in the Form I-129 petition with supporting documentation, and the Form I-290B with supporting documentation. According to the evidence, the beneficiary would:

- Provide direct and/or indirect total, holistic nursing care of patients;
- Direct and guide personnel assigned to her, which includes clinical partners, support partners, and clerical partners;
- Supervise health care team members;
- Collect and analyze patient data, identify expected outcomes, develop care plans, implement intervention measures, evaluate patient progress, communicate with others, educate clients, and ensure professional development;
- Prepare patient assignment according to individual patient needs, skills and competency of staff, and infection control measures;
- Act as a team leader;
- Ensure quality and completeness of care;
- Manage daily clinical activities;
- Train new employees and students, reporting concerns about team members performance in a timely manner;
- Perform problem solving and interventions; and
- Manage daily performance and interaction of team members.

The petitioner requires that the proffered position be filled by a registered nurse who is a graduate of an accredited school of nursing, and who has a state license to practice in California. The petitioner does not state that it requires a bachelor's degree in nursing (BSN) for entry into the offered position, but finds the beneficiary qualified by virtue of her BSN and license to practice nursing in California.

The petitioner has not met any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify the offered position as a specialty occupation. The job responsibilities to be assigned to the beneficiary fall within the duties of a registered nurse with supervisory responsibilities. In the *Occupational Outlook Handbook (Handbook)*, 2004-05 edition at 301-302, the Department of Labor describes, in part, the duties of a registered nurse:

Registered nurses (RNs) work to promote health, prevent disease, and help patients cope with illness. They are advocates and health educators for patients, families, and communities. When providing direct patient care, they observe, assess, and record symptoms, reactions and progress in patients; assist physicians during surgeries, treatments, and examinations; administer medications; and assist in convalescence and rehabilitation. RNs also develop and manage nursing care plans; instruct patients and their families in proper care; and help individuals and groups take steps to improve or maintain their health. While State laws govern the tasks that RNs may perform, it is usually the work setting that determines their daily job duties.

....

Hospital nurses form the largest group of nurses. Most are staff nurses, who provide bedside nursing care and carry out medical regimens. They also may supervise licensed practical nurses and nursing aides. Hospital nurses usually are assigned to one area, such as surgery, maternity, pediatrics, emergency room, intensive care, or treatment of cancer patients. Some may rotate among departments.

A review of the *Handbook* finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a registered nurse.

There are three major educational paths to registered nursing: a bachelor's of science degree in nursing (BSN), an associate degree in nursing (ADN), and a diploma. BSN programs, offered by colleges and universities, take about 4 years to complete. . . . ADN programs, offered by community and junior colleges, take about 2 to 3 years to complete. . . . Diploma programs, administered in hospitals, last about 3 years. . . . Generally, licensed graduates of any of the three types of educational programs qualify for entry-level positions as staff nurses. *Id at 302.*

The proffered position is a nursing position beyond the entry level registered nurse, but it is not analogous to an administrative nursing position. The Immigration and Naturalization Service (now CIS) issued a policy memo regarding H-1B nurse petitions on November 27, 2002.¹ With regard to administrative nursing

¹ Memorandum from Johnny N. Williams, Executive Associate Commissioner, INS Office of Field Operations, Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses, HQISD 70/6.2.8-P (November 27, 2002).

positions, that memo provides as follows: "Nursing Services Administrators are generally supervisory level nurses who hold an RN, and a graduate degree in nursing or health administration. (See Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook* at 75.)" The *Handbook* reference is to the classification of medical and health services managers. On page 75, the *Handbook* states:

The term "medical and health services manager" encompasses all individuals who plan, direct, coordinate and supervise the delivery of healthcare. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system.

The position does not describe a nursing services administrator or medical and health services manager. Any of the three career paths noted above are sufficient for the beneficiary to perform the duties associated with the offered position. Experience and good performance can lead to promotion for a registered nurse to more responsible positions, such as assistant head nurse or head nurse/nurse supervisor. There is no requirement, however, that a nurse have a baccalaureate or higher degree, or its equivalent, as a minimum requirement for entry into those positions. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations, or that it normally requires a degree in a specific specialty for entry into the offered position, and offers no evidence in this regard. The petitioner has, therefore, failed to establish either of the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can be performed only by an individual with a degree in a particular specialty, or that they are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a particular specialty. The petitioner has failed to establish either of the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4) as the duties of the position are routine for nurses/supervisory nurses in the industry and are regularly performed by nurses having less than a baccalaureate level education.

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 and the appeal shall accordingly be dismissed.

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