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U.S. Citizenship
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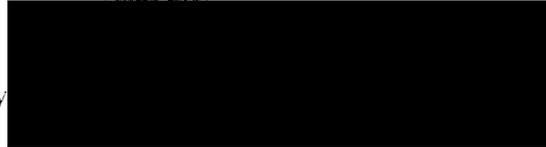
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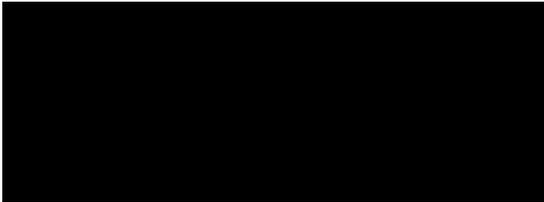
FILE: WAC 04 092 53565 Office: CALIFORNIA SERVICE CENTER Date: DEC 05 2005

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 residential care home that seeks to employ the beneficiary as its quality assurance coordinator/analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel files a brief.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), 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, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (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 quality assurance coordinator/analyst which counsel indicated as being similar to a health services manager as defined in the Department of Labor's *Dictionary of Occupational Titles*. The petitioner indicated in its letter of support of the initial petition that the duties of the position require the services of an individual who possesses at least a bachelor's degree in nursing or a related

field or science. The petitioner submitted an educational evaluation showing the beneficiary has achieved the equivalent of a bachelor's degree in nursing.

The director issued a request for evidence demonstrating that the beneficiary has experience in advanced nursing care and clinical administration and documenting that the beneficiary has recognition of expertise in the specialty through progressively responsible experience.

The petitioner submitted "various certifications from previous employers with detailed job descriptions and responsibilities which show that [the beneficiary] has performed duties beyond just his nursing responsibilities."

The director found that many of the listed duties of the proffered position are similar to those of a medical and health services manager as described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director noted the following about the educational requirements for medical and health services managers:

Medical and health services managers must be familiar with management principles and practices. A master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations. Physicians' offices and some other facilities may substitute on-the-job experience for formal education.

The director found that the petitioner failed to meet the aforementioned criteria to establish that the beneficiary could perform the duties of the specialty occupation. The director noted that the letter from the beneficiary's prior employer indicated that the beneficiary's duties were general in nature and were not related to the proffered position.

On appeal, counsel refers to the *Handbook's* description of the educational requirements for a medical and health service manager and notes "a bachelor's degree is adequate for some entry-level position in smaller facilities and for some entry-level positions at the departmental level within health care organizations." Counsel asserts that the petitioner is an intermediate facility for the developmentally disabled. The petitioner indicates that it has 19 employees. The petitioner explains that a person with training or experience in administration but has no training or experience in nursing or in a medical field would be unable to do the job sufficiently.

The AAO notes that the *Handbook* indicates that medical and health services managers must be familiar with management principles and practices. A master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. Additionally, the *Handbook* states "medical and health services managers have training and experience in both health and management." The petitioner asserts that it is an intermediate facility. The petitioner indicates that it has 19 employees. It has not provided evidence of the number of patients it manages, the number of beds, or the size of the facility. Therefore, the petitioner cannot establish it is the type of facility discussed in the *Handbook* that may require a bachelor's degree in a related field for an entry-level position as a health services manager. The record is insufficient for the AAO

to make that determination. The AAO further notes that the petitioner agreed to pay a salary of \$26,000 for the full-time position. The *Handbook* indicates the median annual earnings for medical and health services managers in 2002 at nursing facilities were \$55,320.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration. The beneficiary holds the equivalent of a bachelor's degree in nursing.

The petitioner has not met the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) and has not established that the beneficiary has the equivalent of a master's degree in the specific specialty required by the specialty occupation. The petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO finds that the proffered position does not qualify as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 its quality assurance coordinator/analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's February 5, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: interpreting, analyzing and implementing quality standards in the health services provided by the petitioner's health staff and personnel; performing analysis of health services agreements, contracts, reviewing three facility policies and procedures manuals and the comprehensive implementation of the petitioner's goals in the operation of the petitioner's facility; developing a standard policy to be followed by the health care staff of the facility; scheduling or monitoring that each care staff has the requisite training, instruction or continuing education to comply with standards imposed by the state; consulting with the facility administrator and other staff to assist them in developing ongoing evaluation programs to identify, resolve and report opportunities to improve patient care; evaluating ongoing quality improvement activities across the facility to assure timeliness, accuracy and compliance with licensing and regulation requirements; participating in risk management by investigating problems encountered by patients, identifying patterns and trends in patient care problems and developing policies and procedures to reduce risks; analyzing the facility's requirements in determining the training and instruction appropriate and needed by the care staff to update them with the latest medical breakthroughs, equipment and procedures; improving existing policies on handling complaints and suggestions by clients; and reviewing care staff performance and records before recommending re-negotiation or renewal of contracts. The petitioner indicated that the position required a bachelor's degree in any of the following fields: nursing or any health care related field, or sciences, or business administration with a medical background.

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 turns first to 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)).

The AAO does not agree with the director's conclusion that the proffered position is that of a medical or health services manager. The proffered position is similar to that of a nurse supervisor. In its *Handbook*, 2004-2005 edition, the DOL states the following about the training and educational requirements for registered nurse positions:

There are three major educational paths to registered nursing: a bachelor's of science degree in nursing (BSN), an associate degree in Nursing (A.D.N.), and a diploma. . . . Generally, licensed graduates of any of the three types of educational programs qualify for entry-level positions as staff nurses.

[S]ome career paths are open only to nurses with bachelor's or advanced degrees. A bachelor's degree is often necessary for administrative positions, and it is a prerequisite for admission to graduate nursing programs in research, consulting, teaching, or a clinical specialization.

The *Handbook* does not elaborate on administrative nursing positions within this classification, although reference is made to two nursing positions within the classification of registered nurse that appear analogous to the proffered position. The *Handbook* states the following about head nurses or nurse supervisors:

Head nurses or nurse supervisors direct nursing activities, primarily in hospitals. They plan work schedules and assign duties to nurses and aides, provide or arrange for training, and visit patients to observe nurses and to ensure that the patients receive proper care. They also may ensure that records are maintained and equipment and supplies are ordered.

The proffered position appears to resemble a nursing position beyond the entry-level registered nurse, but it does not appear to be analogous to an administrative nursing position. A recent CIS policy memo provides the following commentary on administrative nursing positions: "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. The *Handbook* states:

The occupation, 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.

In this case, the petitioner has not demonstrated that the proffered position is an administrative position, which would require a registered nurse with a master's degree in nursing or health administration. Rather, the proposed duties are similar to those of a head nurse or nurse supervisor, including "scheduling or monitoring that each care staff has the requisite training, instruction or continuing education" Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

The petitioner has submitted no information to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The record also does not include any evidence from professional associations regarding an industry standard. The petitioner submitted several newspaper advertisements for the position of quality assurance coordinator or utilization review coordinator. The advertisements did not include job descriptions or information about the employers. Therefore, the advertisements are insufficient to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. In addition, no documentation to support the

complexity or uniqueness of the proffered position was submitted. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. For this additional reason, the petition may not be approved.

Beyond the decision of the director, there is no evidence that establishes that the residential care facilities are open and functioning. Without such evidence, the petitioner has not established that the beneficiary is coming to the United States to perform services temporarily in a specialty occupation as required by Section 101(a)(15)(H)(i)(b) of the Act; 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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.