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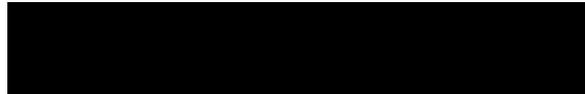
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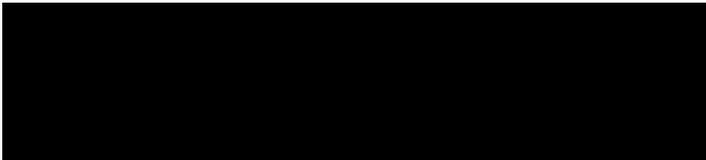
FILE: WAC 01 086 50553 Office: CALIFORNIA SERVICE CENTER Date: DEC 09 2005

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 nursing home that seeks to employ the beneficiary as a head nurse and 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Immigration and Nationality Act (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 bachelor's degree or higher degree, but one in a specific field of study directly related to the proposed 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 accompanying brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a head nurse. Evidence of the beneficiary's duties includes: the Form I-129 with supporting documentation and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: supervising and coordinating nursing activities on each ward or hospital unit; outlining specific duties; overseeing patient admissions; identifying patient needs and assigning nursing care according to chart and doctors' instructions; following through and checking on patients throughout the shift; reviewing and preparing reports from

previous shifts and following shifts; directing nursing staff in each patient's course of care; correcting and leading in certain medical procedures using electronic equipment or hand-held equipment; scheduling and coordinating pre- and post-op procedures and general patient care; scheduling shifts for nursing staff, nursing aides and household staff; monitoring and overseeing nurses' care of patients, including emergency care; outlining critical care procedures, regular care procedures and frequency of meals; arranging meal requirements according to doctors' requirements, evaluating nursing activities, staff relations, and efficiency of service; preparing and maintaining patient records; inspecting rooms and wards; accompanying physicians on rounds; keeping informed of current procedures; and keeping track of patient care.

The director asked the petitioner to submit the following evidence to support the assertion that the proposed position was a specialty occupation: present and past job announcements for the proposed job; a detailed job description including specific duties, percentage of time to be spent on each duty, level of responsibility, hours per week of work, types and number of employees the beneficiary would supervise, and the minimum education, training, and experience necessary to do the job; the approval notice for the beneficiary's requested extension of stay; and information regarding the beneficiary's immigration status.

In response, the petitioner provided a letter from counsel but no additional documentation.

The director found that the petitioner failed to establish that the position met the requirements for a specialty occupation. The director noted that the duties of the position were consistent with those of a registered nurse and that, according to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, an individual does not need to hold a bachelor's degree in nursing to fill a registered nurse position.

On appeal, counsel asserts that the proposed position is distinct from a registered nurse position and is complex enough to meet the requirements of a specialty occupation.

Upon review of the record, the AAO concludes that the petitioner has failed to establish that its head nurse position meets any of the four criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A).

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) - a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. To determine 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 highly specialized knowledge, and the attainment of a bachelor's degree in a specific field of study 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. The duties of the proffered position fall within those noted for head nurses. The *Handbook* describes what head nurses do in the following way:

[head nurses] 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 *Handbook* notes that the most significant source of education for nurses is graduation from an approved nursing program. The *Handbook* also notes that the length of nursing programs varies from between two and four years. As noted above, in order for a position to be considered a specialty occupation, it must require a bachelor's or higher degree in a specific field of study as a minimum for entry into the occupation. Since individuals can work as head nurses with either a two, three, or four-year diploma or degree, the petitioner

failed to establish that a bachelor's degree in nursing or a related field is normally the minimum requirement for entry into the proposed position.

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) - a degree requirement is common to the industry in parallel positions among similar organizations. The record does not contain any evidence to support this criterion. Accordingly, the petitioner has not established that the requirement of a bachelor's degree in nursing is common to the industry in parallel head nurse positions among similar-sized nursing homes.

The AAO turns next to the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree and the fourth prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) - 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. Counsel asserts that the proposed position meets this criterion because the duties are complex. The duties of the proposed position are routine to any head nurse position, such as supervising and coordinating nursing activities, preparing and maintaining patient records, scheduling shifts for nurses, nurses aides, and household staff, and accompanying physicians on their rounds. Counsel asserts that the job is different than a registered nurse position because it entails a higher degree of responsibility. The petitioner has not submitted any documentary evidence to establish that these additional supervisory duties bring a particular complexity or uniqueness to the position requiring a baccalaureate degree in nursing. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has not established that the proposed position is a specialty occupation based upon the complexity or uniqueness of its duties.

The AAO now turns to 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a bachelor's degree or its equivalent for the position. As the record does not contain any evidence of the petitioner's past hiring practices, the petitioner has not met its burden of proof in this regard. *Matter of Soffici*.

The AAO notes that on November 27, 2002, CIS issued a policy memorandum on H-1B nurse petitions (nurse memo) and acknowledged that an increasing number of nursing specialties require a higher degree of knowledge and skill than a typical registered nurse staff nurse position.¹ In this matter, however, nothing in the proposed position's job description indicates that the beneficiary would be working in a nursing specialty that requires a higher degree of knowledge or skill than that possessed by a registered nurse without a bachelor's degree. As stated previously, the duties of the position are routine. An individual who does not possess a bachelor of science in nursing (BSN) or its equivalent would be able to successfully execute the duties that the petitioner describes.

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.

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).