

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



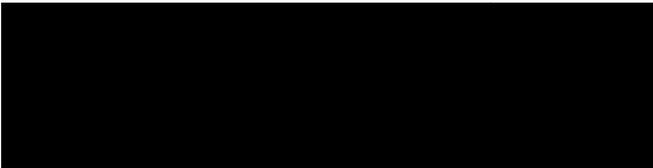
*DZ*

FILE: WAC 02 016 51798 Office: CALIFORNIA SERVICE CENTER Date: DEC 23 2005

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

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.

*For* *Michael T. Kelly*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director denied the nonimmigrant visa petition and certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is a home health agency that seeks to employ the beneficiary as a quality assurance 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's October 24, 2001 request for evidence; (3) the petitioner's response to the director's request; (4) the director's January 10, 2002 denial letter; (5) the Form I-290B and supporting documentation; (6) the AAO's November 18, 2002 remand of the Form I-129; (7) the director's May 6, 2003 request for evidence; (8) the petitioner's response to the director's request; (9) the director's August 28, 2003 notice of certification; and (10) newly-retained counsel's response to the director's certification. The AAO reviewed the record in its entirety before issuing its decision.

The AAO remanded this case to the director on November 18, 2002, after having determined that the proposed position qualifies for classification as a specialty occupation. The AAO determined that the duties of the proposed position mirror those of a health services manager as that position is outlined in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). However, the evidence of record was not sufficient to allow the AAO to determine whether the beneficiary was qualified to perform the duties of the position. Therefore, the matter was remanded to the director for his determination of the beneficiary's qualifications, with certification to the AAO should that decision be adverse to the petitioner. On August 28, 2003, the director found the beneficiary to lack the qualifications necessary to perform the duties of the position and certified his decision to the AAO for review.

The only issue before the AAO is whether the beneficiary is qualified to perform the duties of the proposed position.

As a preliminary matter, the AAO notes that newly-retained counsel's September 22, 2003 response to the director's notice of certification does not address the issue before the AAO. Counsel's letter states that the proposed position is in fact that of a quality assurance coordinator, and argues that it qualifies as a specialty occupation on that basis. As such, counsel is in essence arguing the same point made by previous counsel in his February 7, 2002 appeal. However, the AAO rejected that argument in its October 18, 2002 decision. As noted above, the AAO has already determined that the duties of the proposed position are similar to those of a health services manager.<sup>1</sup> Counsel's letter addresses neither the AAO's decision nor the director's notice of certification. Therefore, counsel's letter is of little probative value.

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:

---

<sup>1</sup> 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.

- (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 AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. The *Handbook* states the following regarding the educational qualifications necessary for entry into this field:

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.

For clinical department heads, a degree in the appropriate field and work experience may be sufficient for entry. However, a master's degree in health services administration or a related field may be required to advance. For example, nursing service administrators usually are chosen from among supervisory registered nurses with administrative abilities and a graduate degree in nursing or health services administration.

The petitioner is a provider of home health care services with 34 employees. According to the petitioner's January 3, 2002 response to the director's request for evidence, it employs twelve registered nurses, eight licensed vocational nurses, and four certified nursing assistants. The beneficiary would study and monitor the level of quality care all of these individuals provide to patients.

In response to the director's request for evidence, the petitioner submitted an evaluation from Josef Silny & Associates, Inc. (Silny), dated June 6, 2003. The Silny evaluator opined that the beneficiary's educational background is equivalent to a bachelor's degree and 27 credits of graduate study in nursing from an accredited institution of higher education in the United States.

The *Handbook* indicates that a bachelor's degree is adequate for entry-level positions in smaller facilities. In most other facilities, a master's degree would be required. The petitioner has not addressed the size of

the facility in relation to other home health providers. There is no evidence in the record that would allow the AAO to ascertain whether the petitioner's company could be considered a "smaller facility" as described by the *Handbook*. Nor does the record indicate that the proposed position is "entry-level."

Therefore, the petitioner has not established that the beneficiary qualifies to perform the duties of the specialty occupation.

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 director's August 28, 2003 decision is affirmed. The petition is denied.