



U.S. Citizenship
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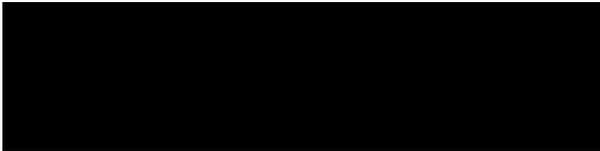


FILE: WAC 03 218 51185 Office: CALIFORNIA SERVICE CENTER Date: FEB 04 2005

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.

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 skilled nursing facility that seeks to employ the beneficiary as a quality assurance coordinator. 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 is not a specialty occupation and the beneficiary is not qualified to perform the duties of the specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not 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.

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 a quality assurance coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 17, 2003 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: developing and implementing a quality assurance program; developing a quality improvement program which will provide planned, organized and on-going processes to ensure that the care for each patient consistently reflects needs, therapeutic interventions and goals that correspond to the care provided; writing quality assurance policies and procedures that comply with federal, state and local regulatory agencies; monitoring the implementation of quality assurance standards and evaluating the effectiveness of the program based on standard criteria; reviewing and evaluating patients' medical records, analyzing medical data, progress reports, interim orders and other reports focusing on various aspects such as problems, therapeutic procedures, drugs, high risk cases and other factors; determining the need for a patient's continued stay in the hospital; overseeing the collection of medical updates; reviewing the records for completion and accuracy; ensuring that high quality, safe and specific care be given to each patient by all disciplines and programs; and ensuring that improvement activities follow the quality improvement process, meeting the regulatory and accreditation requirements, as well as patients' needs. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in nursing, medicine or a related field.

The director found that the proffered position was not a specialty occupation because the job is most like a nurse. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into a nursing position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the duties of the proffered position require the application of a body of highly specialized knowledge and a bachelor's degree for entry into the field.

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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. While the *Handbook* does not specifically refer to the proffered position, the duties of a position, rather than the title, are used to analyze whether a job is a specialty occupation. Titles of positions, by themselves, are not reliable indicators of whether positions are specialty occupations. If the duties of a proffered position are similar to the duties of one or more positions described in the *Handbook*, it is appropriate to use it as a reference.

The AAO concurs with the director that many of the duties of the proffered position are similar to those of a nurse. A review of the registered nurse job description in the *Handbook* confirms the accuracy of the director's assessment that many of the job duties of the proffered position parallel the responsibilities of a registered nurse. The *Handbook* indicates that a head nurse or nurse supervisor ensures that records are maintained, ensures quality assurance standards for patients and determines the proper care or services to provide. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a registered nurse job.

The record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. In researching available certifications for quality assurance coordinators on the Internet, the AAO found that the Healthcare Quality Certification Board (HQCB), which grants Certified Professional in Healthcare Quality status, has no minimum educational or experiential requirements to be eligible to take the certification exam.¹ The California Association for Healthcare Quality is associated with the National Association for Healthcare Quality, the parent of the HQCB. Another certifying organization, the American Board of Quality Assurance and Utilization Review Physicians, which certifies professionals in addition to physicians, states that in order to take the exam, an applicant must either hold a current non-restrictive license in his or her field, or, if the profession does not require licensure, the credentials committee may determine eligibility based on experience and education.² It appears clear that there is no industry standard regarding educational requirements for entry into the field. Thus, the petitioner has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. While the petitioner submitted two flyers advertising a position for a quality assurance coordinator, they are undated and it is not clear whether they are for the current position or were issued some time in the past. The record does not contain any other evidence of the petitioner's past hiring practices. The petitioner has, thus, not met its burden of proof in this regard.

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.

¹ www.cphq.org, accessed October 27, 2004.

² www.abqaurp.org/eligibility.asp, accessed October 27, 2004.

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. Accordingly, the AAO shall not disturb the director's denial of the petition.

The director also found that the beneficiary was not qualified to perform the duties of a specialty occupation that requires licensure.

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 petitioner established that the beneficiary has the equivalent of a bachelor's degree in nursing, and, therefore, would be qualified for a specialty occupation that required such a degree. In this instance, however, if the position had been determined to be a specialty occupation, the beneficiary would still not be qualified for the position. The petitioner has not demonstrated that the beneficiary holds an unrestricted state license, registration or certification which authorizes her to fully practice nursing and be immediately engaged in nursing in the state of intended employment as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

While the petitioner indicates that the proffered position is for a quality assurance coordinator, as discussed above, many of the duties of the proffered position most closely resemble that of a nurse supervisor or head nurse. The *Handbook* indicates that in all states and the District of Columbia, students must graduate from an approved licensing program and pass a national licensing examination in order to obtain a nursing license. The petitioner may not avoid the requirement of a nursing license by calling the position quality assurance coordinator. The duties of the position, not the job title, determine the requirement for licensure. There is no evidence of record that the beneficiary is licensed as a nurse in the United States.

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.