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U.S. Citizenship
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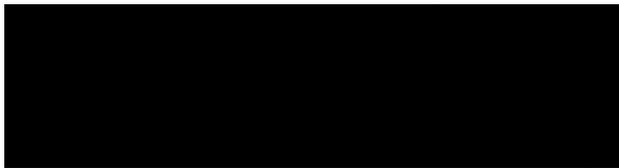
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FILE: WAC 02 129 51474 Office: CALIFORNIA SERVICE CENTER Date: FEB 18 2005

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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reconsider. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is a convalescent hospital that seeks to employ the beneficiary as an associate administrator. 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 on the basis that the proffered position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. The AAO affirmed the director's findings.

On motion, counsel states that the proffered position, which includes supervisory nurse duties, is that of a health services manager. Counsel states further that the AAO incorrectly concluded that the petitioner submitted an expanded job description with new duties in response to the director's request for additional evidence. Counsel also states that although the second job description is expanded, both the first and second job descriptions focus on the overall quality of the services rendered in the petitioner's facility. Regarding the beneficiary's qualifications, counsel states that the beneficiary holds a foreign nursing degree that has been determined to be the equivalent of a U.S. baccalaureate degree and, therefore, he is qualified to perform the proposed duties based on his educational credentials alone.

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; (5) Form I-290B and supporting documentation; (6) the AAO's decision dismissing the appeal; and (7) the petitioner's motion to reconsider. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an associate administrator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's February 25, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the duties described in the petitioner's February 25, 2002 letter, the beneficiary would perform duties that entail: interpreting, analyzing, and implementing quality standards for each of the petitioner's clients; assisting in formulating solutions to complaints based on suggestions from clients and patients; developing standard policies in coordination with the human resources department; monitoring training and continuing education requirements for each nurse in accordance with the Board of Nursing and the petitioner's standards; reviewing nurse performance before renewing contracts; and implementing an effective communication/information system to resolve problems with staff tardiness, absenteeism, and truancy.

According to the duties described in counsel's April 8, 2002 letter, submitted in response to the director's request for additional evidence, the beneficiary would perform duties that entail: interpreting and implementing quality assurance standards to ensure quality care of each patient; reviewing quality assurance standards, studying existing policies and procedures, and evaluating the effectiveness of quality assurance programs; reviewing and evaluating patients' medical records and evaluations, nurse notes, home health care notes, therapist notes, and social worker notes for completeness and conformance to the facility's policies; working with nursing supervisors in formulating the patient's treatment plan according to the physicians' directions; formulating the curricular program for the staff in service; conducting in-service lectures to the staff to improve and implement quality assurance programs; selecting topics for review; compiling statistical data and writing narrative reports summarizing quality assurance findings; applying utilization review criteria and reviewing patients' records and personnel engaged in quality assurance review of medical records; and reviewing the work product of resident nurses and other personnel.

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 Department of Labor's *Occupational Outlook Handbook (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)).

First, the AAO does not agree with the petitioner's assertion that the proffered position would normally require a bachelor's degree in nursing or a related field. The proffered position is that of an associate administrator. The AAO does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the AAO considers. 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, *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, as described herein, which do not require a bachelor's degree, or equivalent, in a specific specialty for an entry-level position. The proposed

duties described in the petitioner's February 25, 2003 letter, such as monitoring the nurses, including their training, tardiness, absenteeism, and truancy, are in line with the duties of a head nurse or nurse supervisor. As such, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Regarding parallel positions in the petitioner's industry, counsel submitted Internet job postings for health-related positions. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. For example, one of the positions is that of center manager for On Lok Senior Health, which is a group of five affiliated non-profit organizations that provide services in the home, day health centers, and contracted institutions. The proposed duties include providing team leadership and management/negotiation skills, supervising and evaluating more than 20 professional and ancillary team members, and facilitating daily care meetings and weekly interdisciplinary team meetings. Another position is a quality improvement manager for Mid Atlantic Services, Inc., one of the largest health services companies in the Mid-Atlantic region, whose duties entail providing advice, leadership, and support to the quality improvement process, focusing on network access, credentialing, and member services areas. The petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described in the advertised positions. Thus, the advertisements have no relevance.

The record does not include any evidence from professional associations regarding an industry standard. 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).

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. As counsel does not address this issue on appeal, it will not be discussed further.

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.

The AAO will now address the director's conclusion that the beneficiary is not qualified to perform a specialty occupation.

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), 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.

Pursuant to 8 C.F.R. 214.2(h)(4)(v):

General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Temporary licensure. If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

The beneficiary holds a diploma from a Filipino nursing school awarding the beneficiary a "Graduate in Nursing" degree. The beneficiary also holds a registered nurse professional license issued by the Filipino Professional Regulation Commission. The record contains an evaluation from a company that specializes in evaluating academic credentials concluding that the beneficiary's foreign educational credentials are the equivalent of a U.S. bachelor's degree in nursing.

Pursuant to Title 16 of the California Code of Regulations § 1414.1 Foreign Licensees:

An applicant who is currently licensed in a foreign country and who meets the educational requirements in § 2736 may be issued an interim permit, subject to the conditions set forth in subsections (b), (c), (d), and (e) of § 1414.

The record contains no evidence that the beneficiary meets the educational requirements set forth by the State of California. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In view of the foregoing, 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.

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 previous decision of the AAO, dated July 2, 2003, is affirmed. The petition is denied.