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U.S. Citizenship
and Immigration
Services

D2

FILE: WAC 03 008 53824 Office: CALIFORNIA SERVICE CENTER Date: JAN 03 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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 convalescent hospital. In order to employ the petitioner as a utilization review 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 determined that the proffered position is that of a health services manager at a nursing home, and that this position is a specialty occupation because the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* indicates that such positions require licensure and training as a nursing home administrator and at least a master's degree in health services administration, long term care administration, health sciences, public administration, or business administration. However, the director denied the petition on the basis that the petitioner had failed to establish that the beneficiary is qualified to serve in a specialty occupation in accordance with the criteria set forth 8 C.F.R. § 214.2(h)(4)(iii)(C). While acknowledging that the beneficiary holds the foreign equivalent of a U.S. baccalaureate degree in nursing, the director found that the petitioner had not established that the beneficiary had obtained the requisite licensure, training as a nursing home administrator, and aforementioned master's degree.

On appeal, present counsel agrees with the director that the petitioner has proffered a health services manager position that is a specialty occupation. Counsel, however, disagrees with the characterization of the position as a nursing home administrator position, and she asserts that that the proffered position therefore requires neither a master's degree nor licensure. Relying, in part, on the *Handbook's* statement that a "bachelor's degree is adequate for some [health services manager] entry-level positions in smaller facilities and at the departmental level within healthcare organizations," counsel contends that the beneficiary is qualified to serve in this specialty occupation by virtue of her nursing degree. To support her argument that one can qualify for a health services manager position with a bachelor's degree in nursing, counsel refers to the information about medical and health services managers at the DOL Employment and Training Administration's *Online Wage Library*.

Upon consideration of the entire record of proceeding, including counsel's brief on appeal and the documents submitted with it, the AAO has determined that both the director and counsel erred in characterizing the proffered position and in assessing the position's educational requirements. Counsel rightly asserts that the director was incorrect in determining that the proffered position requires licensing and State-mandated training as a nursing home administrator. The evidence establishes that the position is subordinate to and materially different than that of an administrator. In fact, the evidence indicates that the proffered position mostly involves assistance to the director in a limited, narrow area, namely records review and upkeep for monitoring and reporting on the utilization of the petitioner's resources. On the other hand, counsel is incorrect in characterizing the proffered position as a health services manager position as described in the *Handbook* and in asserting that the position requires a bachelor's degree in nursing. As will be discussed below, the evidence of record only establishes that the proffered position is a health services administrative support position that does not require at least a bachelor's degree in a specific specialty.

Counsel's brief (at pages 5 and 6) contains this description of the proffered position and its duties:

The petitioner is not offering a nursing home administrator position; therefore, an administrator license, training programs, and continuing education are not requirements for this position. The offered position is utilization review coordinator[,] which entails coordination of health records services; analy[sis of] patient's medical records and charts to determine the validity of the patient's admission, treatment, and length of stay at the facility to ensure compliance with government and insurance reimbursement policies; comp[arison of] patient's medical records and charts to determine the validity of the patient's admission, treatment, and length of stay; anal[ysis of] insurance, governmental, and accrediting agency standards to ensure we meet appropriate criteria regarding patient's admissions, treatment, and length of stay; review[ing] records, tak[ing] raw data and input[ing it] into computer to maintain statistics and generate reports; and determine[ing] patient review dates according to established diagnostic criteria.

The above information substantially comports with the "position offered" information that the petitioner provided in the letter of support filed with the Form I-129. It is noted, however, that the letter of support was phrased to indicate that medical staff would be involved in the work with charts and medical records on the validity of a patient's admission, treatment, and length of stay: "Compare medical records to established criteria and confer with medical and nursing staff to determine [the] appropriate treatment and length of stay." The letter also stated, "The position will not involve any direct patient care by the Beneficiary," and it provided this rationale for requiring someone with the beneficiary's education:

Since the position requires reviewing medical records and charts, familiarity with medical terms and terminology, and also the medical knowledge concerning illness, affirmatives [sic], illnesses, etc.[,] it is essential that the beneficiary have a bachelor's degree in a medical field, such as nursing or medicine.

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) has consistently interpreted 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 petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. The director based his finding of a specialty occupation on an incorrect application of the *Handbook's* information to the evidence of record. The proposed duties do not comport with the medical and health services management occupation as described in the *Handbook* or at the *Occupational Information Network (O*NET)* Internet site.

The overall thrust of the *Handbook's* section on medical and health services managers is that they deal with a much wider scope of duties and responsibilities than the record of proceeding outlines for the beneficiary. As reflected in this excerpt from the 2004-2005 Internet edition of the *Handbook*, the emphasis for health services managers is on management of the whole or substantial divisions of a health service facility:

Healthcare is a business and, like every other business, it needs good management to keep it running smoothly. The occupation, medical and health services manager, encompasses all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. [M]edical 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.

The structure and financing of healthcare is changing rapidly. Future medical and health services managers must be prepared to deal with evolving integrated healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work, and an increased focus on preventive care. They will be called upon to improve efficiency in healthcare facilities and the quality of the healthcare provided. Increasingly, medical and health services managers will work in organizations in which they must optimize efficiency of a variety of interrelated services—for example, those ranging from inpatient care to outpatient followup care.

Large facilities usually have several assistant administrators to aid the top administrator and to handle daily decisions. Assistant administrators may direct activities in clinical areas such as nursing, surgery, therapy, medical records, or health information. (Managers in nonhealth areas, such as administrative services, computer and information systems, finance, and human resources, are not included in this statement. For information about them, see the statements on management occupations elsewhere in the *Handbook*.)

In smaller facilities, top administrators handle more of the details of daily operations. For example, many nursing home administrators manage personnel, finance, facility operations, and admissions, and have a larger role in resident care.

Clinical managers have more specific responsibilities than do generalists, and have training or experience in a specific clinical area. For example, directors of physical therapy are experienced physical therapists, and most health information and medical record administrators have a bachelor's degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

The evidence does not place the petitioner's utilization review coordinator among the *Handbook's* health service managers. This employee would not be in the echelon of "individuals who plan, direct, coordinate, and supervise the delivery of healthcare." Even though the petitioner labels the beneficiary as an "assistant administrator," the beneficiary would not perform either the above described specialist role (being "in charge of specific clinical departments or services") or generalist role ("manag[ing] or help[ing] to manage an entire facility or system.") The above excerpt indicates that health and medical services managers' duties and responsibilities are substantially more than what the evidence of record indicates about the duties proposed for the beneficiary. The same is also evident in the tasks that the *O*NET* describes for the health and medical services manager occupation:¹

- Direct, supervise and evaluate work activities of medical, nursing, technical, clerical, service, maintenance, and other personnel.
- Establish objectives and evaluative or operational criteria for units they manage.
- Direct or conduct recruitment, hiring and training of personnel.
- Develop and maintain computerized record management systems to store and process data, such as personnel activities and information, and to produce reports.
- Develop and implement organizational policies and procedures for the facility or medical unit.

¹ At the beginning of each of its occupational sections, the printed version of the *Handbook* provides a Standard Occupation Classification (SOC) code number for retrieving the *O*NET* information about the related occupation(s). The *O*NET* can be accessed on the Internet at <http://online.onetcenter.org/>.

- Conduct and administer fiscal operations, including accounting, planning budgets, authorizing expenditures, establishing rates for services, and coordinating financial reporting.
- Establish work schedules and assignments for staff, according to workload, space and equipment availability.
- Maintain communication between governing boards, medical staff, and department heads by attending board meetings and coordinating interdepartmental functioning.
- Monitor the use of diagnostic services, inpatient beds, facilities, and staff to ensure effective use of resources and assess the need for additional staff, equipment, and services.
- Maintain awareness of advances in medicine, computerized diagnostic and treatment equipment, data processing technology, government regulations, health insurance changes, and financing options.

Although the proposed duties do not comport with the medical and health services management occupation as described in the *Handbook* or at the *O*NET* Internet site, some of them align with the duties that the 2004-2005 *Handbook* ascribes to the medical records technician occupation, for which the *Handbook* indicates no requirement for at least a bachelor's degree or the equivalent in a specific specialty. (See pages 323-326).

Department of Labor resources address the utilization review coordinator occupation as distinctly different than the health services management occupation. The *Dictionary of Occupational Titles (DOT)*, last revised in 1991 and expressly replaced by the *O*NET*, contains this entry, which substantially comports with the duties depicted in the record:²

079.267-010 UTILIZATION-REVIEW COORDINATOR (medical ser.)

Analyzes patient records to determine legitimacy of admission, treatment, and length of stay in health-care facility to comply with government and insurance company reimbursement policies; Analyzes insurance, governmental, and accrediting agency standards to determine criteria concerning admissions, treatment, and length of stay of patients. Reviews application for patient admission and approves admission or refers case to facility utilization review committee for review and course of action when case fails to meet admission standards. Compares inpatient medical records to established criteria and confers with medical and nursing personnel and other professional staff to determine legitimacy of treatment and length of stay. Abstracts data from records and maintains statistics. Determines patient review dates according to established diagnostic criteria. May assist review committee in planning and holding federally mandated quality assurance reviews. May supervise and coordinate activities of utilization review staff.

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² The *DOT* can be accessed on the Internet at <http://www.oalj.dol.gov/libdot.htm>.

Entering the *DOT* occupation code for utilization resource coordinators (079.267-010) at the *O*NET* Internet site's section for "crosswalking" from the *DOT* to the *O*NET* reveals that the *O*NET* assigns utilization resource coordinators to the occupational category "29-9099.99 – Healthcare Practitioner's and Technical Workers, All Other." This is separate from the *O*NET*'s occupational category for the health services manager occupational category, "11-9111.00 - Health and Medical Services Managers."³ With regard to the "Healthcare Practitioners and Technical Workers, All Others" occupational category to which the *O*NET* assigns utilization resource coordinators, the *O*NET* notes that it encompasses "[a]ll healthcare practitioners and technical workers not listed separately." The *O*NET* further states:

Data is not collected for this "residual" (also called "all other") occupational title. It is made up of many different types of occupations with a wide range of characteristics. Thus, one set of data would not provide a good description for this occupational title.

The *Handbook* does not specifically address the utilization resource coordinator occupation. It is noteworthy, however, that the *Handbook*'s section on medical and health services managers crossreferences only the *O*NET* occupational code 11-9111.00, and not the code for Healthcare Practitioners and Technical Workers, All Others (29-9099.99) that encompasses resource utilization coordinators. The record, thus, does not establish that a degree in a specific specialty is a minimum requirement for entry into the occupation.

The AAO finds that the "Texas Job Growth and Average Wage" sheet and the job vacancy advertisements in the record have little probative value to establishing the proffered position as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). The AAO discounted the "Texas Job Growth and Average Wage" sheet: the petitioner has not identified the entity that published the sheet, and there is no description of the factual basis upon which the sheet's degree-requirement statement is based. Moreover, while a degree requirement seems to be listed, the chart does not indicate that a degree in a specific specialty is required.

The record's job vacancy advertisements from other firms are too few to establish that their stated educational requirements are the normal minimum entry requirement for utilization review coordinators. Also, these documents, which include only one advertisement from each selected employer, do not indicate the extent to which the employers have limited their recruitment and hiring standards to the specified educational requirements. These documents establish no more than that the few employers selected by the petitioner had specified at least one time the hiring standards stated in the advertisements.

In addition to the general deficiencies just discussed, the individual advertisements have little relevance to the particular position that the petitioner has proffered here. The duties stated in the Blue Cross/Blue Shield,

³ With regard to the "Healthcare Practitioners and Technical Workers, All Others" occupational category to which the *O*NET* assigns utilization resource coordinators, the *O*NET* notes that it encompasses "[a]ll healthcare practitioners and technical workers not listed separately." The *O*NET* further states:

Data is not collected for this "residual" (also called "all other") occupational title. It is made up of many different types of occupations with a wide range of characteristics. Thus, one set of data would not provide a good description for this occupational title.

University of Texas - Houston Health Science Center, Brockton psychiatry department, and the University of Southern California advertisements materially exceed those that the petitioner has specified for its position. The St. Jude Children's Research Hospital (SJCRH), Pleasant Care, "Utilization Management Nurse," and Kaiser Permanente advertisements describe the jobs' duties so vaguely that they offer no meaningful basis for comparison with the proffered position. Also, in contrast to the proffered position, five of the eight advertisements require a Registered Nurse (RN) license.

It is also noted that the educational standards of several of the advertisements are inconsistent with the proposition for which the petitioner offered them, for they require less than a bachelor's degree in nursing or any other specific specialty: SJCRH (graduation from an Registered Nurse (RN) program required; bachelor's degree in nursing (BSN) "preferred," but not required); "Utilization Management Nurse" (RN with either an associate's degree in nursing ("AND") or a BSN; and Kaiser Permanente ("4 Year Degree" – no academic major specified).

Because the evidence of record does not establish that the proffered position is one normally characterized by an initial entry requirement of a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Also, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence does not satisfy the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) by showing a specific-specialty degree requirement that is common to the petitioner's industry in positions that are both (1) parallel to the one proffered here and (2) located among organizations similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As discussed above, the petitioner has not established that its resource utilization coordinator position is a type for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. Furthermore, there are no submissions from a professional association or firms or individuals in the industry that attest to the routine recruitment and employment of only persons with at least a bachelor's degree in nursing or some other specific specialty closely related to the proposed duties.

Finally, for the reasons detailed earlier in this decision, the job vacancy announcements and the sheet on Texas wage and education information have so little probative value as to be inconsequential to the outcome of this proceeding.

The AAO also finds that the evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2). This criterion provides that, instead of a specialty

degree requirement that is common to the industry, "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." The petitioner has limited its description of the position to generalized and generic terms that elucidate nothing that would be more complex than or unique from a medical administrative support position requiring medical knowledge that could be acquired by an associate's degree in nursing or some other route short of a bachelor's degree. Counsel and the petitioner have asserted the requirement for a BSN, but they have not presented details of any tasks that would support their contention. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Next, the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty.

In light of the statutory and regulatory definitions of specialty occupation (cited earlier in this decision), this criterion has several evidentiary elements. First, the petitioner must demonstrate that it has an established history of hiring for the proffered position only persons with at least a bachelor's degree or equivalent. Second, this bachelor's degree or equivalent must be in a specific specialty that is characterized by a body of highly specialized knowledge. Third, the petitioner must also establish that both the nature and the level of highly specialized knowledge that the bachelor's degree or equivalent signifies are actually necessary for performance of the proffered position.

The evidence of record establishes none of these evidentiary requirements. As already discussed at length, the petitioner has not demonstrated that performance of the duties of the proffered position requires at least a bachelor's degree or its equivalent in a specific specialty. Furthermore, the petitioner has not presented an established history of recruiting and hiring only persons with a specialty degree. It cites only one prior person as employed as its resource utilization coordinator (and proof of that person's degree is not included in the record). This does not establish a normal course of recruiting and hiring.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The record fails to provide any tasks that demonstrate such specialization and complexity, and there are no examples of required knowledge that is usually associated with a bachelor's degree as opposed to a lesser degree, such as an associate's degree in nursing or medical technology.

In sum, the AAO finds that the scope of the proffered position does not exceed medical administrative support duties that require less than a bachelor's degree in nursing or any other specific specialty. The evidence of record only establishes that the utilization review coordinator would have to possess and apply some medical knowledge to health service records. The evidence does not establish that this knowledge is so highly specialized as to require at least a bachelor's degree level in a specific specialty.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition is denied.