

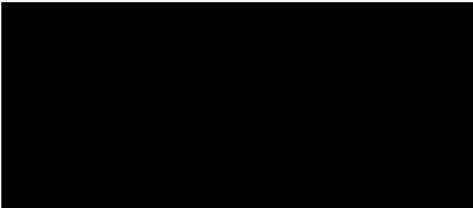
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U.S. Citizenship
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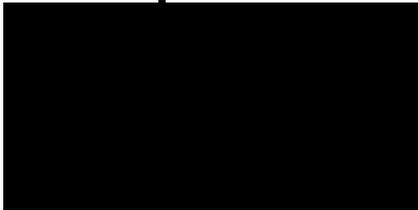
D2

FILE: WAC 03 080 54617 Office: CALIFORNIA SERVICE CENTER Date: JUN 28 2005

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

PETITIC 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 BEH LF 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 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 nursing registry and medical supplier 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 director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 requests for additional evidence; (3) the petitioner's response to the director's requests; (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 Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail collecting and analyzing data on performance measures and patient outcomes, comparing performance with other skilled nursing facilities; benchmarking development and comparisons within the organization to prioritize needs; educating staff; designing a new service and testing new methods to complete a specific function; designing a process to monitor quality outcomes and performance thorough data collection with particular attention to high-risk, high-volume, or problem prone processes; maintaining, developing, and revising policies and procedures in response to regulatory needs and operational changes; planning and conducting internal audits to determine compliance with governmental regulations; developing benchmarks to improve operations; assessing and recommending revisions to institutional standard operating procedures; interpreting and implementing quality assurance standards in the hospital to ensure quality care to patients; reviewing quality assurance standards, hospital policies, and procedures to evaluate effectiveness of quality assurance programs, reviewing patient records applying utilization review criteria; and writing reports on quality assurance findings. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in nursing.

The director stated that the proposed position resembled that of a nursing supervisor and that the State Board of Nursing recognizes that someone with a degree in nursing, which is less than a baccalaureate-level degree, could perform the duties of a registered nurse. The director also stated that the industry does not require registered nurses to possess a bachelor's degree, and that the proposed duties and stated level of responsibility do not indicate a complexity or authority that is beyond what is normally encountered in the occupational field of nursing. The director determined that a review of the evidence indicates that although the petitioner states that it is a nursing registry and medical supply business, the petitioner does not employ any nurses so the beneficiary would have no staff to evaluate.

On appeal, counsel states that the proposed position is not analogous to a registered nurse. Counsel refers to the *Dictionary of Occupational Title's (DOT)* description of a quality assurance coordinator to establish that the proposed position is a specialty occupation. Counsel contends that employers require a bachelor's degree for a quality assurance specialist position. According to counsel, the petitioner expects its nursing registry to be in full operation within the year and to have the quality assurance coordinator position in place to implement the quality assurance program.

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 first considers 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.

Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's *DOT*. However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and the *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within that occupation. For this reason, the AAO is not persuaded by a claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it a specific SVP rating in the *DOT*.

The Form I-129 petition indicates that the petitioner has 12 employees, an annual gross income of \$1.4 million, and a net income of \$250,000. However, the evidence in the record does not substantiate this. The petitioner's Form 1120S reveals gross income of \$661,600 in 2002, and the EDD-DE6 Form indicates that in 2003 the petitioner employed four employees in the following positions: bookkeeper, accounts receivable, medical biller, and advertising and promotions. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Nothing in the record explains the inconsistency of the petitioner's assertions on the Form I-129 petition with the submitted documentary evidence.

The regulation at 8 C.F.R. § 214.2(h)(1)(ii)(B)(1) indicates that the H-1B classification applies to an alien who is coming temporarily to the United States to perform services in a specialty occupation, and CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). The record contains insufficient evidence to establish that a specialty occupation existed for the beneficiary at the time the petition was filed. The director correctly observed that the petitioner employs no nurses even though one aspect of its business is that of a nursing registry. Counsel's January 30, 2004 letter indicates that all of the petitioner's employees work in the medical supply aspect of the petitioning entity, and that "[i]t's [sic] nursing registry is not operational as of the present time[.]" As described by the petitioner, the beneficiary's duties primarily relate to the operation of the petitioner's nursing registry. For instance, the beneficiary is expected to collect and analyze data on performance measures and patient outcomes, and compare the petitioner's performance to other skilled nursing facilities; interpret and implement quality assurance standards in the hospital to ensure quality care to patients; review quality assurance standards, hospital policies, and procedures to evaluate effectiveness of quality assurance programs, reviewing patient records applying utilization review criteria; and write reports on quality assurance findings. Given that the evidentiary record reveals that the nursing registry was not

operational at the time the H-1 petition was filed by the petitioner, no specialty occupation existed in which the beneficiary could occupy. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Based on the above discussion, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Because the petitioner failed to provide sufficient evidence to show that a specialty occupation existed for the beneficiary at the time the petition was filed, the petitioner fails to establish the criteria under 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2), (3) or (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 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.