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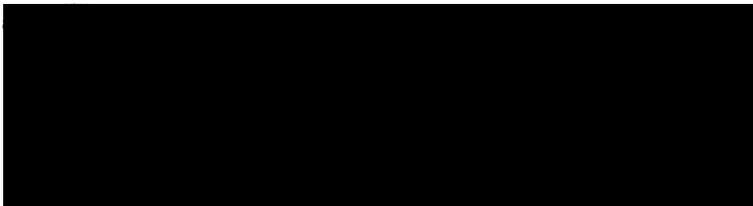


FILE: WAC 02 196 51640 Office: CALIFORNIA SERVICE CENTER Date: MAR 03 2005

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 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 an adult residential care facility that seeks to employ the beneficiary as an administrator. 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 beneficiary is not qualified to perform the proffered position. On appeal, counsel states that the beneficiary is qualified for the proffered position and submits additional evidence.

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 record of proceeding before the AAO contains, in part: (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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an administrator. The petitioner's May 20, 2002 letter indicated that a candidate must possess a master's degree in administration or a related field.

The director determined that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree required by the specialty occupation: health services or nursing home administrator. Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director concluded that the beneficiary did not possess the appropriate license, registration, or certificate to provide services as a health services administrator. The director stated that if the petitioner provided no medical or health services, then the proffered position resembled a hotel manager, which is not a specialty occupation.

In the appeal brief, counsel narrates the duties of the proffered position and states that a candidate must possess a baccalaureate degree in administration, management, or in a closely related field. Counsel contends that the beneficiary is qualified for the proffered position based on her education and work experience. According to counsel, licensing is not required for the proffered position because the position is administrative and managerial in nature.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position.

The record contains inconsistencies regarding the duties and educational requirements of the proffered position. The job description in the petitioner's May 20, 2002 letter indicated that the beneficiary's duties entail the "management of the facilities, finance, patient care and employee management; participation with the medical director in developing and periodically revising policies and procedures to assure consistent efficient and safe operation of the facility"; participation in forming the budget and reviewing personnel; overseeing/supervising nursing and technical services, "maintaining communication and continuity of planned care when patients are transferred to other Powelson Homes and maintain open communication with physicians, nurse practitioners and other health care professionals regarding patient care"; and being "responsible for all employee activity such as hiring, promoting job performance evaluations and disciplinary actions." Counsel's December 8, 2003 letter, submitted in response to the request for evidence, describes some of the beneficiary's duties as studying the petitioner's organization, methods, and procedures to recommend solutions to operating problems; "systems analysis/design"; "cost/benefit analysis"; "analyzing operating divisions to make recommendations on improving, revising and modifying organizational structure, work methods, systems and procedure"; reviewing unit operations, information flow, integrated production methods, and inventory control to identify work problems, program deficiencies, and resource waste; and "preparing work simplification and classification studies." In this letter, counsel states that a candidate must possess "at least a bachelor's degree in the field of administration, management, or other closely related field of study." In the appeal brief, counsel narrates the duties of the proffered position as described in the December 8, 2003 letter.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a

petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary is a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Thus, the AAO will not consider in this proceeding the job description and educational requirement indicated in the December 8, 2003 letter and in the appeal brief that materially alter the proffered position and its educational requirement as initially described by the petitioner in the May 20, 2002 letter.

The director properly determined that the *Handbook* reveals that the proffered position resembles a nursing home administrator, an occupation that requires a bachelor's degree, a license, and the completion of a state-approved training program.

The beneficiary does not hold a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university. Education Evaluators International, Inc. indicates that the beneficiary possesses the equivalent to a U.S. master of science in education with a major in administration and supervision; this degree is in the field of education, thus it is not pertinent to the proffered position which is in the field of health care. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has

achieved recognition of expertise in the specialty occupation as a result of such training and experience.

No evidence in the record establishes 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), (3), or (4). When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary's prior training and work experience did not include the theoretical and practical application of specialized knowledge required by the specialty, nursing home administrator. The certificates in the record relate to a six-month caregiving program; the subjects include child care, first aid and emergency care, home management and nutrition, care for the elderly and disabled, and personality development and communication skills. Only two courses, care for the elderly and disabled and first aid and emergency care, relate to the proffered position. The letter from Home for the Dying Destitute indicates the beneficiary's job title and employment dates; it does not mention the beneficiary's duties. The letter from the Republic of the Philippines Department of Education, Schools Division of Tarlac, indicates the beneficiary's employment as a teacher; this is not relevant evidence. Thus, the beneficiary's past work experience and training did not include the theoretical and practical application of a body of highly specialized knowledge, which in this case relates to a nursing home administrator. Furthermore, the letter from the Home for the Dying Destitute did not indicate that the beneficiary's work experience was gained while working with peers, supervisors, or

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

subordinates who have a degree or its equivalent in the specialty occupation. No evidence shows that the beneficiary has recognition of expertise. The evaluator from Education Evaluators International, Inc. cannot be considered a "recognized authority" because the evaluator did not provide his qualifications as an expert; no resume or other evidence was attached to the evaluation. As indicated in the *Handbook*, a nursing administrator must possess proper licensure. No evidence in the record shows that the beneficiary has a license to provide services as a nursing home administrator.

As related in the discussion above, 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 appeal is dismissed. The petition is denied.