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U.S. Citizenship  
and Immigration  
Services

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DZ

FILE: WAC 04 091 50793 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 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.

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 skilled nursing facility 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 proposed position is not a specialty occupation. On appeal, counsel states that the proposed position qualifies as 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 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 petitioner's 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 reviewing, interpreting, and implementing quality assurance standards in the facility to ensure quality care to patients; studying policies and procedures; interviewing personnel and patients to evaluate the quality assurance program; evaluating and interpreting collected data and preparing quality assurance reports, programs, and analysis setting forth progress, adverse trends, and recommendations and conclusions; performing complex and independent activities such as collecting, analyzing, documenting, and interpreting company, medical, and other data related to departmental quality assurance; developing forms and procedures to review, track, and compile information on policies and procedures relating to the evaluation of patients' medical records such as problem procedures, drugs, high volume cases, and high risk cases; compiling statistical data and writing narrative reports summarizing quality assurance findings; coordinating proper delivery and inventory with medical equipment suppliers; reviewing patient records, applying utilization review criteria to determine the patient's need for admission and/or continued stay in the nursing facility; and overseeing personnel that provide quality assurance review of medical records. For the proposed position the petitioner requires at least a baccalaureate degree in science with a major in biology or a closely related medical field.

The director denied the petition, finding that the proposed duties are those of a medical assistant as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*); and that the *Handbook* indicates that this occupation does not require a baccalaureate degree in a specific specialty. The director stated that the petitioner submitted no evidence to demonstrate that the skilled nursing facility industry requires a baccalaureate degree for the proposed position. The director stated that the proposed duties are generic in nature, lacking detail as to the proposed position's unique or complex nature; that the proposed position is no more specialized or complex than any other medical assistant job; and that no documentary evidence supports counsel's assertions as to the proposed position's complex and unique nature. The director noted that the proposed position was newly created, and concluded that the job postings did not establish that the proposed position is a specialty occupation.

On appeal, counsel states that the director's decisions should not supplant the petitioner's business judgments and that this relates to the "business judgment rule."<sup>1</sup> Counsel asserts that the proposed position differs from a medical assistant, and that the petitioner's size and the number of its employees should not dictate whether it requires the services of a quality assurance coordinator. According to counsel, since the proposed position is entry-level in nature, it requires at least a baccalaureate degree in natural science, biology, nursing, healthcare, or

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<sup>1</sup>Counsel also cites to an unpublished case to state that CIS should give deference to an employer's view and should not rely simply on standardized government classification systems.

medical education. Counsel states that the *Dictionary of Occupational Titles (DOT)*, the *Handbook*, and the *Occupational Information Network Online (O\*Net Online)* reveal that the proposed position is a specialty occupation. The submitted job postings, counsel maintains, reflect that in the medical and health field a baccalaureate degree is common in parallel positions. Counsel asserts that the proposed position requires a high level of competency, efficiency, and theoretical knowledge in order for the beneficiary to review the petitioner's services and quality assurance standards, study policies and procedures, and interview personnel and patients to evaluate the effectiveness of the quality assurance program; and that the proposed position involves sophisticated analysis and scientific expertise. Counsel states that the petitioner seeks to expand and extend its services beyond the local community.

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. 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Counsel's reference to and assertions about the relevance of information from the *DOT* and the *O\*Net Online* are not persuasive in establishing that the proposed position is a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Neither the *DOT's* specific vocational preparation (SVP) rating nor a Job Zone category indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The AAO routinely consults the *Handbook* for a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. The AAO finds that the *Handbook* reveals that the proposed duties are those of a registered nurse (RN); the *Handbook* conveys:

Some nurses move into the business side of health care. Their nursing expertise and experience on a healthcare team equip them with the ability to manage ambulatory, acute, home health, and chronic care services. Employers—including hospitals, insurance companies, pharmaceutical manufacturers, and managed care organizations, among others—

need RNs for health planning and development, marketing, consulting, policy development, and quality assurance. Other nurses work as college and university faculty or conduct research.

With respect to the educational requirements of nurses, the *Handbook* relays:

There are three major educational paths to registered nursing: a bachelor's of science degree in nursing (BSN), an associate degree in Nursing (ADN), and a diploma.

The *Handbook* explains that all states and the District of Columbia require that students graduate from an approved nursing program and pass a national licensing examination in order to obtain a nursing license.

The proposed duties are encompassed within the areas of policy development, quality assurance, and health planning and development; and the *Handbook* indicates that employers need RNs for these areas. Since the *Handbook* reports that nurses do not require a baccalaureate degree in science with a major in biology or a closely related medical field, as there are other educational paths to registered nursing, the petitioner fails to demonstrate that the proposed position qualifies as a specialty occupation pursuant to the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent is not the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that the degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submits job postings. For various reasons, this evidence is not convincing. Two of the job postings (Job ID WAC 0400483 and 177034) have truncated duties; thus, the AAO cannot determine whether the duties parallel those of the proposed position. The job postings from Kaiser Permanente (seeking a continuing care coordinator RN) and the Community Hospital of Long Beach indicate the employers require RN licensure: those positions do not parallel the proposed position. For these reasons, the job postings fail to establish that the degree requirement is common to the industry in parallel positions among similar organizations.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner establish that the particular position is so complex or unique that it can be performed only by a person with a degree. As discussed earlier in this decision, the proposed duties are encompassed within the areas of policy development, quality assurance, and health planning and development; and the *Handbook* discloses that employers use RNs for these areas, and that they do not require that RNs hold a baccalaureate degree in science with a major in biology or a closely related medical field. No evidence shows that the proposed duties have such complexity or uniqueness as to require a baccalaureate degree in science with a major in biology or a closely related medical field. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Since this is a newly created position, the petitioner cannot establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that it normally requires a degree or its equivalent for the proposed position.

To satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO has already conveyed that the proposed duties are encompassed within the areas of policy development, quality assurance, and health planning and development; that the *Handbook* reveals that employers use RNs for these areas; and that RNs do not require a baccalaureate degree in science with a major in biology or a closely related medical field. Although counsel asserts that the proposed position requires a high level of competency, efficiency, theoretical knowledge, and sophisticated analysis and scientific expertise, no independent evidence reflects that the proposed duties are so specialized and complex as to require knowledge that is usually associated with the attainment of a baccalaureate degree in science with a major in biology or a closely related medical field. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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.