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U.S. Citizenship and Immigration Services

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FILE: WAC 03 082 53115 Office: CALIFORNIA SERVICE CENTER Date: NOV 0 2 2005

IN RE: Petitioner: [redacted]
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:

[redacted]

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 clinical training 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, the petitioner states that the proffered position qualifies as a specialty occupation, and submits previously submitted and additional evidence.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 clinical training coordinator. Evidence of the beneficiary's duties includes: the Form I-129 and the letter accompanying the Form I-129. According to this evidence, the beneficiary would perform duties that entail developing a clinical training program that includes policies, procedures, and demonstration tools; and providing documents for orientation and for documenting history/physicals, and tuberculosis screening. The beneficiary will conduct on-going, in-service plans for nursing education and training programs that satisfy the annual 24-hour requirement for nursing assistants. The beneficiary will handle the annual calendar of training schedules; schedule in-service education; and in accordance with state and federal regulations, provide annual mandatory, in-service coordination for facility employees. The beneficiary will coordinate schedules with administrators and department heads; assist the administrator and director of nursing services in ensuring that nursing procedures and policies are implemented; and maintain in-service records of employees. The petitioner stated that the proposed position requires a relevant baccalaureate degree.

The director denied the petition, finding that the petitioner did not establish that the proposed position met the definition of a specialty occupation. The director also found that the record did not establish that the beneficiary previously performed duties pertaining to an administrative training coordinator and had recognition of expertise in such a position. The State Board of Nursing, the director stated, recognizes that a person with a degree in nursing can perform the duties of a registered nurse (RN); and that a degree in nursing is less than a baccalaureate-level degree.

On appeal, counsel states that the proposed position is a specialty occupation and that the beneficiary qualifies for the proposed position. According to counsel, the proposed position resembles a health services manager as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), as the proposed position requires specialized and complex skills and knowledge comparable to a health services manager. Counsel states that the *Handbook* conveys that "health services managers are usually chosen among supervisory registered nurses with administrative abilities and a graduate degree in nursing or health services administration." The health services industry, counsel contends, requires a baccalaureate degree as the normal minimum requirement. Counsel emphasizes that the beneficiary will ensure that nursing procedures and policies are implemented and reinforced; and will implement policies, objectives, and procedures to ensure efficiency in the delivery of health services. Referring to job postings, counsel states that they show that clinical training coordinators and health services managers require a baccalaureate degree. Counsel states that the duty of developing clinical training programs and conducting on-going service plans are specialized and complex, requiring the implementation of principles and strategies that are acquired from a specialized baccalaureate degree program. Counsel relies on an April 23, 2004 memorandum from William R. Yates, Associate Director

for Operations[1] (Yates memo), to support his assertion, which is that the director should not re-adjudicate the instant petition since CIS has already determined that the proffered position is a specialty occupation, as it had approved a similar petition filed by the beneficiary's prior employer.

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.

Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved a similar petition in the past. This record of proceeding does not, however, contain the evidence submitted to the service center in the prior case. In the absence of the corroborating evidence contained in that record of proceeding, counsel's assertions are not sufficient to enable the AAO to determine whether the previously approved and instant petitions are parallel. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The AAO finds counsel's reference to the Yates memo unpersuasive in that the Yates memo provides guidance when an officer adjudicates a subsequent request for a petition's extension, and there is no material change in the underlying facts, and the petition involves the same parties (petitioner and beneficiary). Here, the parties differ as the petitions submitted on behalf of the beneficiary were filed by different employers. The beneficiary's previous employer, Summit Care Corporation, is not the petitioner, Fountain View, Inc. /Willow Creek Healthcare Center. The AAO notes that the petitioner's April 26, 2004 letter states that the beneficiary had been employed by the petitioner "Skilled Healthcare, LLC though their subsidiary Summit Care Corp."; however, no evidence in the record substantiates this relationship between the companies; and equally important, no evidence shows that the previously approved petition has the same underlying facts as the instant petition. The Yates memo, moreover, acknowledges that CIS has the authority to question prior determinations. It also states that adjudicators are not bound to approve subsequent petitions or applications seeking immigration benefits where eligibility has not been demonstrated, merely because of a prior approval which may have been erroneous. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Each matter must be decided according to the evidence of record on a case-by-case basis. *See* 8 C.F.R. § 103.8(d).

The AAO next 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

[1] Memorandum from William R. Yates, Associate Director for Operations, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity.*

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)).

The AAO disagrees with counsel's assertion that the proposed position parallels a health services manager as that occupation is described in the *Handbook*. The AAO finds that the *Handbook* reveals that the proposed position resembles a head nurse or nurse supervisor, as those positions provide or arrange for training, and that the proposed duties involving policy development also relate to an RN, as the *Handbook* reports:

> 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.

The *Handbook* states the following about the training and educational requirements for RN positions:

> There are three major educational paths to registered nursing: associate degree in nursing (A.D.N.), bachelor of science degree in nursing (B.S.N.), and diploma. . . . Generally, licensed graduates of any of the three program types qualify for entry-level positions as staff nurses.
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> . . . [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.

As discussed above, the proffered position parallels an RN involved in the business side of health care; and since an RN does not require a baccalaureate degree in a specific specialty, the petitioner fails to establish 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.

The three job postings fail 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. Unlike the petitioner, Great West Life & Annuity and Kaiser Permanente require RN licensure; thus, their positions differ from the proposed position, which does not require RN licensure. Furthermore, none of the employers, including Baxter International, Inc., a developer, manufacturer, and distributor of products, systems, and services in the healthcare industry, is similar in nature and scope to the petitioner, a small dental clinic. Thus, the petitioner fails to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

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. Counsel asserts that the beneficiary will ensure that nursing procedures and policies are implemented and reinforced, and will implement policies, objectives, and procedures to ensure efficiency in the delivery of health services. As discussed earlier, the *Handbook* reveals that the proposed duties of training and policy development are encompassed within the duties of an RN, which is an occupation that does not require a baccalaureate degree in nursing. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

No evidence establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which requires that the petitioner establish that it normally requires a degree or its equivalent for the position.

To establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) the petitioner must show 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. Counsel states that the duties of developing clinical training programs and conducting on-going service plans are specialized and complex, requiring implementation of principles and strategies acquired from a specialized baccalaureate degree program. The *Handbook* undermines counsel's statement as it discloses that an RN performs those duties, and that employers do not require an RN to possess a baccalaureate degree in a specific specialty such as nursing. Consequently, the petitioner fails to establish this last at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.