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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 03 234 50070 Office: CALIFORNIA SERVICE CENTER Date: **OCT 24 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 service center director 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 residential healthcare facility for the elderly that seeks to employ the beneficiary as a health services analyst. 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 denied the petition because the beneficiary is not qualified to perform the duties of the specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Immigration and Nationality Act (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 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 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 health services analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 11, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: monitoring the quality of health services being delivered by the staff to patients and residents to assess if services conform to the health standards established by the petitioner; conducting research studies on current innovations and updates and attending conferences and seminars regarding residential care, assisted living, rehabilitative and wellness health services to improve the overall efficiency and quality of benefits that the petitioner provides; managing all records of the petitioner's inpatients and outpatients; evaluating the existing information processing system and assessing its effectiveness and developing a new system to improve operating procedures, data storage and retrieval and the petitioner's overall workflow and daily activities; overseeing billing and collection procedures; leading budget deliberations and planning; preparing reports and recommendations to management in order to establish more diligent and accurate standard operating procedures and programs; supervising and participating actively in the development and implementation of mechanism and procedural schemes related to hiring, performance evaluation and other personnel concerns; and preparing workflow charts, diagrams and procedural bulletins to be followed by the petitioner's personnel. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in any medical-related field.

The director found that the proffered position was most like a management analyst. The AAO disagrees. While the petitioner calls the proffered position a health services analyst, the duties of the position are most similar to those of a health services manager. The AAO turns to 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. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. The *Handbook* states that the general requirement for a health services manager is a master's degree, and a bachelor's degree is adequate for some entry-level positions in smaller organizations; it also states, "Physician's offices and some other facilities may substitute on-the-job experience for formal education." Therefore, in many instances, a health services manager is a specialty occupation.

The petitioner reports that it has 137 beds, 110 employees, and a gross annual income of approximately \$4.1 million. The petitioner is not a physician's office, nor is the proffered position an entry-level position in a smaller organization. Therefore, the educational requirement for the proffered position would be a master's degree, and in this case, is a specialty occupation.

Section 214(i)(2) of the Immigration and Nationality Act (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 petitioner is seeking the beneficiary's services as a health services analyst. The AAO has determined that the duties of the proffered position are like those of a health services manager. The petitioner indicated in its August 11, 2003 letter of support that it wished to hire the beneficiary because she possessed a bachelor's degree in nursing and progressively responsible work experience that provided her with "effective organizational and planning skills, a keen ability on [sic] person-to-person interaction, a work background characterized by stern medical procedures regimentation and exposure to strictly-structured group systems and group dynamics in medical and healthcare settings.". The petitioner stated that a qualified candidate would have a baccalaureate degree or its equivalent in a medical-related field.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to the master's degree required for most private-sector management analysts. As noted, the AAO finds that the position is not a management analyst, but a health services manager. The AAO finds that the beneficiary is not qualified to perform the duties of a health services manager. The petitioner established that the beneficiary has the equivalent of a baccalaureate degree in nursing from a U.S. college or university. However, the specialty occupation requires a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration, according to the *Handbook*.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration. The beneficiary does not hold a master's degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a master's degree from a U.S. college or university in any field of study.

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;
- (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.

On appeal, counsel states that the beneficiary's education and experience qualify her to perform the duties of the proffered position. Counsel also states that CIS approved previous petitions that were similar to the instant petition.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), in order to establish equivalence to a master's degree, the beneficiary must have a baccalaureate degree followed by at least five years of experience in the specialty. 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 occupation<sup>1</sup>;
- (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 record contains an evaluation of the beneficiary's education from Morningside Evaluations and Consulting, which found the beneficiary's foreign degree to be equivalent to a bachelor's degree in nursing from a regionally accredited college or university in the United States. The record also contains six employment letters.

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. Her most recent employer, since approximately 1985, indicates that the beneficiary was a teaching assistant, as well as acting "as the school nurse as the need has arisen." Previous employers stated that the beneficiary worked as a staff nurse and as a registered nurse for various periods. As described by each employer, the beneficiary's duties did not appear to involve the theoretical and practical application of health services management. The employers describe the beneficiary's duties generically, with no specificity regarding the beneficiary's daily activities or her level of responsibility. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is health services management. Furthermore, none of the employers indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise as required by the regulations.

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<sup>1</sup> *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).

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.

Regarding the petitioner's assertion that similar petitions were previously approved, the record of proceeding does not contain copies of the visa petitions that the petitioner claims were previously approved. If the previous nonimmigrant petitions were approved based on the same assertions that are contained in the current record, the approval would constitute clear and gross error on the part of CIS. CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987); *cert. denied* 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between the court of appeals and the district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.