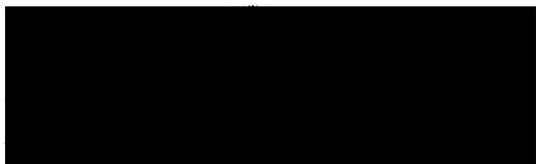


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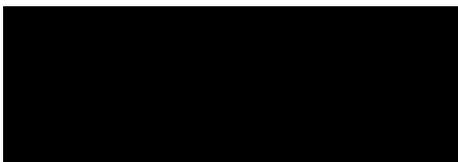
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FILE: WAC 04 091 51354 Office: CALIFORNIA SERVICE CENTER Date: OCT 26 2005

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is an intermediate facility for the developmentally disabled. It seeks to employ the beneficiary as health services coordinator and to classify him 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 on the ground that the record failed to establish that the proffered position is 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

On Form I-129 the petitioner described itself as an intermediate care facility for developmentally disabled persons, established in 1995, with 19 employees and a gross annual income of \$980,000. The petitioner stated that it proposed to hire the beneficiary as a health services coordinator to “deal with the interpretation, analysis and implementation of quality standards in the health services provided by the petitioner’s health staff and personnel.” In an accompanying letter the petitioner indicated that the job would involve the analysis of health services agreements and contracts and the review of the facility’s policies and procedures manual. Specific duties of the position were described as follows:

- [The beneficiary] will deal directly with human resources in developing a standard policy to be followed by the health care staff of the facility. He will then schedule or monitor that each care staff has the requisite training, instruction or continuing education to fully comply with the quality standards imposed by state and local regulations and the proper standard of care as expected by each patient in the facility.
- He will develop an effective communication/information system between the client, the care staff and personnel in order to monitor, avoid and eventually eliminate tardiness, absenteeism and truancy among the healthcare staff. He will see to it that the system is being implemented and followed as planned.
- He will analyze the facility’s requirements in determining the training and instruction appropriate and needed by the care staff to update them with the latest medical breakthroughs, equipment, and procedures.
- He will improve on existing policies in handling complaints and suggestions by a client and/or its patients. He will review a care staff performance and record before recommending re-negotiation or renewal of his/her contract.

The minimum educational requirement for the proffered position, the petitioner states, is a bachelor’s degree in nursing (B.S.N.), in a related health care or science field, or in business administration. The beneficiary received a bachelor of science in nursing from Remedios T. Romualdez Memorial Schools in Makati, the Philippines, on March 21, 1997.

In his decision the director determined that a majority of the proffered position’s duties are administrative in nature, requiring some knowledge of a registered nurse but not the services of a health services manager. Registered nurses, the director pointed out, do not require a baccalaureate level degree. The director found that the administrative duties of the proffered position reflected those of an administrative services manager as described in the Department of Labor (DOL)’s *Occupational Outlook Handbook (Handbook)*, and quoted an excerpt from the *Handbook* indicating that entry into such a position does not require a baccalaureate degree in a specific specialty. Job advertisements in the record from other companies were not similar enough to the petitioner to establish that a degree requirement is common to the industry, the director indicated, and the evidence of record did not establish that the duties of the position are so complex or unique that a baccalaureate degree is required to perform them. The petitioner failed to show that it normally requires a degree or its equivalent for the position, or that the duties are so specialized and complex that baccalaureate or higher level knowledge is required to perform them. The director was not persuaded that the proffered position could not be performed by an experienced

individual with less than a baccalaureate level of education, and concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2 (h)(4)(iii)(A). The director also noted that the petitioner had neglected to provide certain evidence about its business operations specifically requested in the RFE, and determined that the petitioner had failed to meet its burden of proof to establish eligibility for the requested benefit.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook*, *supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. *See Shanti, Inc. v. Reno, id.*, at 1165-66.

On appeal counsel asserts that the duties of the proffered position are not those of an administrative services manager, or a registered nurse, but rather those of a medical and health services manager as described in the DOL *Handbook*. The *Handbook* states that a bachelor's or master's degree in a health or business-related specialty is the standard educational credential for medical and health services managers, counsel points out, making it a specialty occupation. An individual with administrative training alone, counsel argues, could not perform the duties of the proffered position. A bachelor's degree in nursing or a related medical field is required, according to counsel, because the position involves the review and analysis of hospital manuals, health services agreements, interpretation of hospital policies, procedures and guidelines, as well as complex medical terminology.

The *Handbook* describes the occupational category of medical and health services managers, in pertinent part, as follows:

The occupation, medical and health services manager, encompasses all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system.

. . . . Future medical and health services managers must be prepared to deal with evolving integrated healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring at work, and an increased focus on preventive care. They will be called upon to improve efficiency in healthcare facilities and the quality of the healthcare provided

Large facilities usually have several assistant administrators to aid the top administrator and to handle daily decisions

In smaller facilities, top administrators handle more of the details of daily operations

Handbook, 2004-05 edition, at 55-56. Counsel's contention that the proffered position is that of a health services manager is not substantiated by the evidence of record. The duties of a medical or health services manager, as described in the *Handbook*, appear to exceed the duties of the position at issue in this petition with respect to their scope of responsibility and the knowledge required to perform them. The evidence of record does not demonstrate the level and specific types of health care services provided by the petitioner to its patients and/or clients. The petitioner states that it has 19 employees, but it does not identify the other employees whose services the beneficiary would be coordinating. The petitioner refers to them generically as its healthcare staff without indicating whether they are registered nurses, lower-level nurses, nurse's aides, or other workers. In the RFE, as the director pointed out in his decision, the petitioner was requested to submit an organizational chart and quarterly wage reports which would have described its organizational hierarchy. The requested documents have not been submitted. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. See *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)). Nor do mere assertions by counsel satisfy the petitioner's burden of proof. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, the record does not establish that the proffered position reflects that of a medical or health services manager, as described in the DOL *Handbook*.

Though the director found that the duties of the proffered position were primarily administrative in nature and reflected the duties of an administrative services manager, the AAO is persuaded that the medically-related knowledge required by the duties of the position reflects the occupation of a head nurse or nurse supervisor. That occupation is described in the *Handbook*, 2004-05 edition, at 302:

Head nurses or nurse supervisors direct nursing activities, particularly in hospitals. They plan work schedules and assign duties to nurses and aides, provide or arrange for training, and visit patients to observe nurses and to ensure that the patients receive proper care. They also may ensure that records are maintained and equipment and supplies are ordered.

With respect to the educational requirements for such positions, the *Handbook* indicates that there are three alternative paths for registered nurses generally. They include a four-year B.S.N. degree from a college or university; a two- or three-year associate degree in nursing (A.D.N.) from a community or junior college; and a diploma program, usually three years, at a hospital. See *id.* at 302. Thus, the *Handbook* makes clear that a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into a registered nursing position. Less than baccalaureate level education may suffice for many positions. Certain advanced practice nurses, the *Handbook* notes, have educational and clinical requirements beyond those generally applicable to all RNs. However, there is no indication in the *Handbook* that head nurses or nurse supervisors, though their duties may exceed those of some other registered nurses, require a B.S.N. as a minimum degree requirement for entry into such a position. Rather, it would appear that a two-year associate degree in nursing is often sufficient educational background. Accordingly to the *Handbook*, therefore, a baccalaureate or higher degree in the specific specialty of nursing – *i.e.*, a B.S.N. – is not the minimum requirement for entry into the nursing position proffered by the petitioner, as required to meet the first alternative criterion of a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

A policy memorandum from the legacy Immigration and Naturalization Service in November 2002 provides additional guidance for CIS on the adjudication of H-1B petitions for registered nurses. In surveying the educational requirements for the nursing occupation, the *H-1B Memorandum* notes that the minimum requirement for entry into the field as a registered nurse is a two-year associate degree in nursing (A.D.N.). Though a four-year B.S.N. can be earned at some U.S. and foreign universities, the degree is not required for most entry-level nursing positions in the United States. The *H-1B Memorandum* indicates that certain advanced practice nurses – such as clinical nurse specialists, nurse practitioners, certified registered nurse anesthetists, or certified nurse-midwives – do require a B.S.N. or higher degree, which makes them specialty occupations. Likewise, some nursing specialties – such as critical care, peri-operative, rehabilitation nursing, oncology, and pediatric nursing – require a B.S.N. or equivalent knowledge, making them specialty occupations as well. In addition, some nurses in high-level management positions – “such as an upper-level ‘nurse manager’ in a hospital administration,” according to the *H-1B Memorandum* – require a B.S.N. or higher degree, making them specialty occupations.

The position at issue in this petition does not fit any of the foregoing examples of nursing positions that would require a B.S.N. or higher degree. While the proffered position may involve some first-line supervision of nurses or other healthcare aides, such duties would not enhance the position to that of an H-1B level nurse manager as referenced in the *H-1B Memorandum*. Accordingly, the AAO determines that a baccalaureate or higher degree in nursing or a related specialty is not the normal minimum requirement for entry into the proffered position, as required for it to meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

With respect to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), counsel has submitted on appeal job advertisements from six different organizations – including a hospital, a healthcare facility, a mental health clinic, a cosmetic surgery practice, and two unidentified entities – for positions variously entitled quality assurance coordinator/analyst; health services coordinator; utilization review coordinator analyst; nurse coordinator/analyst; resource coordinator analyst; and quality assurance manager, coordinator, or compliance officer. The advertisements from the hospital and the healthcare facility, however, do not describe what duties are involved in the advertised position. While the advertisements from the hospital, the healthcare facility, the mental health clinic, and one of the unidentified entities specify that a bachelor’s degree in nursing, public health, or a related medical field is required for the position, the other two advertisements state only that a bachelor’s degree is required, without indicating any specialty field. Furthermore, none of the advertising companies appears to be in the same line of healthcare as the petitioner and none of the advertisements provides any information about the company’s size and scale of operations relative to the petitioner. As previously noted, the petitioner states that it has 19 employees and gross annual income of \$980,000, though no documentary evidence thereof has been submitted. The AAO concludes that the job advertisements fail to establish that a bachelor’s degree in nursing or a related specialty is a common requirement of the petitioner’s industry in parallel positions among similar organizations. Thus, the proffered position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor has the petitioner demonstrated that its nursing position is so complex or unique that it can be performed only by an individual with a B.S.N. or related degree, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the record indicates that the proffered position is newly created. Therefore, the petitioner cannot demonstrate that it normally requires a B.S.N.

degree or its equivalent for the position. Accordingly, the position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that baccalaureate level knowledge in nursing or a related specialty is required to perform them. The petitioner has not demonstrated that the duties of the position exceed the scope of a typical registered nurse, an occupation for which baccalaureate level knowledge in a specific specialty is not usually required for entry-level positions, as the *DOL Handbook* and the *H-1B Memorandum* clearly indicate.

For the reasons discussed above, the record does not establish that the proffered position meets any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.