

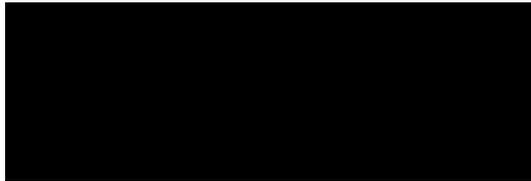


U.S. Citizenship  
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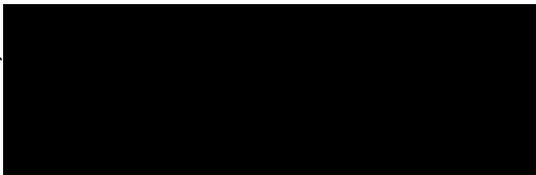


FILE: SRC 04 253 50348 Office: TEXAS SERVICE CENTER Date: APR 26 2008

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the Texas 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 owner and operator of three residential group homes for mentally disabled adults,<sup>1</sup> and 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 petitioner did not establish that the proffered position is a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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.

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<sup>1</sup> The petition indicates that the beneficiary will develop and implement policies for the management of two group homes.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

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) the appeal brief, with 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 control supervisor. Evidence of the beneficiary's duties includes: the I-129 petition; the September 24, 2004 letter of support; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would develop and implement written policies for the management of two group homes for mentally disabled adults, requiring her to:

- Determine admission criteria (5 - 10%);
- Determine discharge criteria (5 - 10%);
- Prepare admission and discharge assessments (10%);
- Develop a client record system (10%);
- Develop a client transportation record system (10%);
- Ensure compliance with state and local regulations (5%);
- Train and hire staff certified nursing assistants, habilitation technicians and support personnel (15%);
- Develop community outreach opportunities for clients (5%);
- Develop emergency transportation and preparedness plans for each client (5%);
- Interact with clients' family members and other interested persons (5%);
- Communicate with offsite support personnel (5%);
- Develop and alter group homes' meal and nutrition programs (5%); and
- Perform other quality control functions as needed, travel between group homes, breaks, etc. (5%);

The petitioner was established in 2001 and has approximately 11 employees. The petitioner states that each of the three of the petitioner's residential group homes for developmentally adults houses 5-6 clients and provides 24-hour care, 7 days per week.

The director found that the proffered position is not a specialty occupation. The director noted that the duties of the position described by the petitioner appear to reflect some of those performed by a supervisory nurse. The director noted that according to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, there is no baccalaureate degree requirement for supervisory nurse positions. Therefore, the director determined that the proffered position is not a specialty occupation.

On appeal, counsel states that the position of quality control supervisor is a specialty occupation and that the petitioner submitted adequate evidence to establish its need for a quality control supervisor. Counsel contends that the director mischaracterized the position as that of a supervisory nurse, and asserts that the proffered position of quality control manager is also referred to as a Qualified Professional [QP] under North Carolina law. The petitioner contends that the duties of the proffered position are similar to those of a health services manager, as described in the *Handbook*, and that the position is a specialty occupation because a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the field, and a degree requirement is common to the industry in parallel positions among similar organizations. Additionally, the petitioner explains that it is obligated under North Carolina law to engage the services of a Qualified Professional for its three facilities to ensure compliance with pertinent state law and regulations. The petitioner states that the incumbent in the proffered position will provide quality assurance at all levels and would interface with state and local compliance officials. On appeal, the petitioner submits a letter from an official employed as a team leader of the Accountability Team, North Carolina Department of Health and Human Services, Division of Mental Health, Developmental Disabilities and Substance Abuse Services. The team leader states that unlike a medical-model position like a registered nurse, a QP position is generally a managerial, supervisory, and systems oversight person. The team leader states that group home facilities and their populations are unique and require the QP to assume managerial and supervisory duties over and above direct care.

The AAO notes that no evidence has been submitted to establish that the nature of the petitioner's business requires the services of a QP under North Carolina law. The record does not establish that the petitioner owns and operates family care homes as stated. In its appeal affidavit the petitioner represents that it is: "licensed by the State of North Carolina and operates according to Title 10A of the North Carolina Administrative Code Section 27G." The petitioner submits relevant copies of the North Carolina governing regulations. Pursuant to North Carolina law, a license is required for any facility if its primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of individuals with mental illness or developmental disabilities. 10A NCAC 27G.0401. A separate license is required for each facility which is maintained at a separate site, even though the sites may be under the same ownership. 10A NCAC 27G.0402(f). A supervised living facility must be licensed if the facility serves two or more adult clients. 10A NCAC 27G.56019(b)(2). The petitioner did not submit copies of licenses, addresses or other indicia of the operation of 3 group homes. The record does not establish that the petitioner is licensed to provide supervised living services for mentally disabled adults in North Carolina.<sup>2</sup> Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. 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)). As the record does not establish that the petitioner owns and operates residential care facilities, the provision of North Carolina law governing licensed facilities will not be considered. The petitioner has not established that the beneficiary would be a QP as defined by the cited North Carolina regulations.

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<sup>2</sup> The state of North Carolina maintains a list of licensed family homes at <http://facility-services.state.nc.us/mhllist.pdf>. However, without the names and addresses of the petitioner's group homes, the AAO cannot independently verify that the homes are licensed.

The AAO notes that the identity of the petitioner is not clear. On appeal, the petitioner's manager submitted an affidavit with the business card of "Agape Healthcare Service", that provides "staffing, respite, home healthcare, private duty [and] group home services." The record does not establish that [REDACTED] the petitioner, is a separate entity from [REDACTED], that provides a variety of services. [REDACTED] Services and [REDACTED] LLC are the same entity, then the beneficiary's duties would encompass a variety of health services, and not simply the management of group homes. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The AAO agrees with the director that the record establishes that the proffered position is similar to that of a nurse charged with quality control for the petitioner, and is not is a specialty occupation.

In its appeal brief, the petitioner asserts that the position is similar to that of a health services manager, and that the *Handbook* indicates that a degree is required by most employers for health services managers. The AAO does not find the duties of the proffered position to be similar to those of a health services manager in the *Handbook*. Moreover, as the petitioner provided incomplete information about its business operations, there is no meaningful description of the tasks that the beneficiary would perform for the petitioner on a daily basis. There is no indication that the duties of the position as it relates to the petitioner's business are so complex or unique that they require the services of a worker with a baccalaureate degree.

Upon review of the record, the petitioner fails to establish any 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 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; and 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 specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (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*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO agrees with the director that the position is that of a nurse. The employment of registered nurses is described in the *Handbook* (2006-2007), <http://www.bls.gov/oco/ocos083.htm>, as follows:

Registered nurses (RNs), regardless of specialty or work setting, perform basic duties that include treating patients, educating patients and the public about various medical conditions, and providing advice and emotional

support to patients' family members. RNs record patients' medical histories and symptoms, help to perform diagnostic tests and analyze results, operate medical machinery, administer treatment and medications, and help with patient follow-up and rehabilitation.

...

Some nurses have jobs that require little or no direct patient contact. Most of these positions still require an active RN license. *Case managers* ensure that all of the medical needs of patients with severe injuries and illnesses are met, including the type, location, and duration of treatment. ... *Nurse administrators* supervise nursing staff, establish work schedules and budgets, and maintain medical supply inventories. *Nurse educators* teach student nurses and also provide continuing education for RNs. *Nurse informaticists* collect, store, and analyze nursing data in order to improve efficiency, reduce risk, and improve patient care. ...

...

Some nurses move into the business side of health care. Their nursing expertise and experience on a health care team equip them to manage ambulatory, acute, home-based, and chronic care. Employers ... need RNs for health planning and development, marketing, consulting, policy development, and quality assurance. ...

Regarding training, the *Handbook* is clear that a baccalaureate degree is not required for the profession. *The Handbook* states:

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. BSN programs, offered by colleges and universities, take about 4 years to complete. In 2004, 674 nursing programs offered degrees at the bachelor's level. ADN programs, offered by community and junior colleges, take about 2 to 3 years to complete. About 846 RN programs in 2004 granted associate degrees. Diploma programs, administered in hospitals, last about 3 years. Only 69 programs offered diplomas in 2004. Generally, licensed graduates of any of the three types of educational programs qualify for entry-level positions as staff nurses.

Accordingly, the AAO finds that the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO now turns to a consideration of whether the proffered position may qualify as a specialty occupation under either of the prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(ii)(A)(2) – a degree requirement is common to the industry in parallel positions among similar organizations, or the proffered position is so complex or unique that it can be performed only by an individual with a degree.

The petitioner has submitted evidence intended to establish the proffered position as a qualified professional under North Carolina law, employment that is “commonly accepted” in North Carolina as requiring the minimum of a four-year college degree.<sup>3</sup> However, the record does not establish that the petitioner is a licensed facility subject to the provisions of North Carolina law. Therefore, the standard requirements for the hiring of QPs in North Carolina is not applicable in this case. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *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)). Therefore, the record fails to establish that a degree requirement is common to the petitioner’s industry in parallel positions among similar organizations.

The record fails to establish that the position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree. As previously discussed, the petitioner provided incomplete information about its business operations, and there is no meaningful description of the tasks that the beneficiary would perform for the petitioner on a daily basis. Accordingly, no evidence of record establishes that the position is so complex or unique that it would require the services of a worker with a baccalaureate degree. Therefore, the petitioner has not established its position as a specialty occupation under either prong of the second criterion.

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine the petitioner’s ability to meet the third criterion, the AAO normally reviews the petitioner’s past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees’ diplomas. In the instant case, the position is new. The petitioner submitted a contract with a consultant as an indication that it previously employed a person with a baccalaureate degree in a similar position. The duties in the consulting employment contract are different than those in the proffered position. Accordingly, the petitioner has failed to prove its normal hiring practices with regard to the proffered position and has not established it as a specialty occupation on this basis.

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<sup>3</sup> Affidavit by [REDACTED] Team Leader, the [REDACTED] Carolina Department of Health and Human Services, Division of Mental Health, Developmental Disabilities and Substance Abuse Services. The AAO notes that [REDACTED] also states that “.. [REDACTED] LLC manages several group home facilities for developmentally disabled adults”. However, the petitioner did not provide any supporting documentation to establish that it is licensed to operate group homes for developmentally disabled adults.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that a petitioner establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. On appeal, the petitioner contends that the duties of the proffered position satisfy the criterion's requirements. The AAO does not agree.

As previously noted, the AAO requires information regarding the specific duties of a proffered position, as well as the nature of the petitioning entity's business operations, to make its determination regarding the position's degree requirements, if any. In the instant case, as previously discussed, the petitioner has not provided a meaningful description of the duties of the proffered position. Accordingly, no evidence of record indicates that the duties of the position will require baccalaureate level knowledge. Therefore, the proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position meets the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Beyond the decision of the director, there is insufficient evidence in the record to determine that the beneficiary is qualified to perform the duties of a specialty occupation under the regulation at 8 C.F.R. § 214.2(h)(4)(v)(A). The petitioner is not licensed as a nurse in North Carolina.<sup>4</sup> The petitioner fails to qualify the beneficiary for the proposed position pursuant to any of the criteria outlined at 8 C.F.R. § 214.2(h)(4)(iii)(C). For this additional reason, the petition may not be approved.

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position meets the requirements for a specialty occupation and that the beneficiary is qualified to perform the services of 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.

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<sup>4</sup> The AAO also notes that the record does not establish that the beneficiary is qualified to provide services as a QP pursuant to North Carolina Law, 10A NCAC 27G, as there is no evidence of her work experience in the record.