



U.S. Citizenship
and Immigration
Services

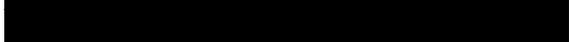
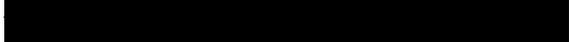
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FILE: LIN 04 153 55736 Office: NEBRASKA SERVICE CENTER Date: **AUG 07 2006**

IN RE: Petitioner: 
Beneficiary: 

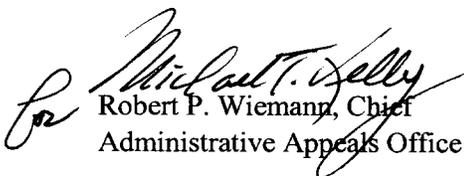
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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, Chief
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 provides comprehensive home health care to older, disabled, and convalescent persons. It seeks to employ the beneficiary as a quality assurance coordinator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief and an expert opinion letter.

The AAO will first address the director's conclusion that the position is not 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 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 quality assurance coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's undated 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: analyzing the petitioner's current practices; interpreting and implementing quality assurance standards; interviewing medical caregivers and patients in order to implement, evaluate, and properly maintain the petitioner's quality assurance program; performing quality assurance review and evaluation of medical records; and writing related reports. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in nursing.

The director found that the proffered position was not a specialty occupation because the petitioner had not demonstrated that it requires a bachelor's degree in a specific specialty. The record also indicates that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the evidence of record contains letters from the following individuals as evidence that the proffered position requires a bachelor's degree or higher in a specific specialty: the petitioner's administrator; a quality assurance coordinator of a similar business; and a Filipino municipal health officer. As further evidence, counsel submits on appeal an expert opinion letter from C.E.I.E. Specialists, Inc., whose evaluator concludes that the minimum requirement for the proffered position is a bachelor's degree in nursing.

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 turns first 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.

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*, 712 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 does not concur with counsel that the proffered position is a specialty occupation. In her August 30, 2004 response to the director's request for additional evidence, the petitioner's administrator describes the proposed duties as: implementing a quality assurance program including education programs, orientation programs and plans, and competency programs for all clinical services; developing, implementing, coordinating, and evaluating the performance improvement program; and ensuring that the petitioner complies with all federal and state regulatory requirements and standards. The proposed duties are similar to those of a registered nurse position, as described in the *Handbook*, 2006-2007 edition. In its *Handbook*, the DOL states the following about the training and educational requirements for registered nurse positions:

There are three major educational paths to registered nursing: a bachelor's of science degree in nursing (BSN), an associate degree in Nursing (A.D.N.), and a diploma. . . . Generally, licensed graduates of any of the three types of educational programs qualify for entry-level positions as staff nurses.

[S]ome career paths are open only to nurses with a bachelor's or master's degree. A bachelor's degree often is necessary for administrative positions, and it is a prerequisite for admission to graduate nursing programs in research, consulting, and teaching, and all four advanced practice nursing specialties – clinical nurse specialists, nurse anesthetists, nurse midwives, and nurse practitioners.

Some RNs start their careers as licensed practical nurses or nursing aides, and then go back to school to receive their RN degree. Most RNs begin as staff nurses, and with experience and good performance often are promoted to more responsible positions.

No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is normally required for a registered nurse job.

The record contains an opinion letter from the director of C.E.I.E. Specialists, Inc., a company that specializes in evaluating academic credentials, who asserts that the proffered position requires a minimum of a bachelor's degree in nursing. The opinion rendered by the evaluator is not probative. Despite his experience in preparing credential evaluation reports, neither his advisory opinion report nor any other evidence of record substantiates that he is qualified as an expert on the hiring practices and recruitment of healthcare quality assurance coordinators. The record does not indicate that the evaluator has adequate knowledge of the particular issue here. He does not demonstrate knowledge of the petitioner's particular business operations. He does not relate any personal observations of those operations or of the work that the beneficiary would perform, nor does he state that he has reviewed any projects or work products related to the proffered position. Further, although the evaluation also contains the names [REDACTED] as corroborating evaluators, the evaluation does not contain their signatures. Thus, the AAO must question whether the opinions expressed by the director of C.E.I.E. Specialists, Inc. are also the views of [REDACTED]. Further, resumes [REDACTED] are not included, and neither of these individuals appears on C.E.I.E.'s list of "Principals, Advisors and Resource Professionals." Further, the opinion on the degree requirement is conclusory. It provides no factual basis and no analytical discussion of how the ultimate opinion and the associated findings, including that "U.S. healthcare standards require professionals with B.S. Nursing degrees," were reached. Accordingly, the opinion is neither helpful nor probative on the evaluation of any of the specialty occupation criteria. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The record also contains a letter from a quality assurance coordinator of a similar business who asserts that the proffered position requires a bachelor's degree in nursing or an equivalent thereof, and that this requirement is industry wide. The writer, however, does not provide any evidence in support of her assertion or rely on industry surveys, data or other documentation to reach the conclusion that the position requires a bachelor's degree in a field related to nursing. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). The *Handbook* is a compilation of results of nationwide industry questionnaires, surveys and personal interviews by the DOL, and indicates that there is no specific degree requirement for entry into the field. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The record also contains a statement from a Filipino municipal health officer certifying the beneficiary's employment as a public health nurse and a quality assurance coordinator in the Philippines. Counsel asserts that this information demonstrates that the proffered position requires a bachelor's degree or higher in a specific specialty, or an equivalent thereof. Counsel, however, does not explain how the beneficiary's foreign employment demonstrates that the proffered position requires a bachelor's degree in nursing. 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).

Regarding parallel positions in the petitioner's industry, the petitioner also submitted Internet job postings for positions related to healthcare quality assurance coordinators. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The advertisements are for nursing-related positions at hospitals/medical centers, a community health organization covering a large geographical area in Canada, and a not-for-profit organization comprising two hospitals and a physician network. The petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described in the advertised positions, such as managing and completing a wide variety of clinical projects for the Okanagan Health Service Area by conducting research, compiling and reporting on findings, creating documents and reports, and preparing work for specific projects identified by the Okanagan Health Service Area Leadership Team. Thus, the advertisements are not probative.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position; and the duties that comprise the proffered position, such as performing quality assurance review and evaluation of medical records and writing related reports, are routine to a registered nurse position and do not establish the position as sufficiently unique or sufficiently complex to require a bachelor's degree level of knowledge in a specific specialty. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states that the record contains a letter, dated August 30, 2004, from the petitioner's administrator, who states that the petitioner normally requires a related bachelor's degree for the proffered position. The record, however, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Further, the petitioner's creation of a position with a

perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. 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 (5th Cir. 2000). The critical element is not the title of the position or 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.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. As described, the proposed duties appear no more specialized and complex than those general duties which the *Handbook* attributes to the general occupational category of registered nurses, for which the *Handbook* does not indicate a normal requirement for or usual association with at least a bachelor's degree in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

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

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

- (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 director also found that the beneficiary was not qualified to perform a specialty occupation. On appeal, counsel states, in part, that the record contains evidence that the beneficiary's bachelor's degree in nursing and related employment experience qualify her for the proffered position. As discussed above, no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a registered nurse position. In this case, the petitioner has not demonstrated that the proffered position exceeds that of a nurse at an associate degree level. The record contains copies of the beneficiary's foreign bachelor's degree in nursing and correspondent transcripts. As such, the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position. The petition may not be approved, however, because the proffered position is not 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.