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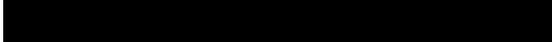
**U.S. Citizenship  
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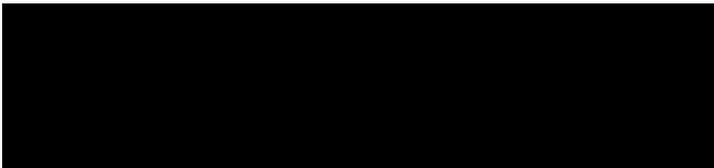
*D2*

FILE: WAC 04 242 51411 Office: CALIFORNIA SERVICE CENTER Date: **AUG 15 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 materials 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. 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 a skilled nursing and rehabilitation facility. It seeks to employ the beneficiary as a coordinator for patient support services, health information and medical records, 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 qualifies as 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) the 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, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In its initial submission, including the Form I-129 and an accompanying letter, the petitioner described itself as a 99-bed skilled nursing facility providing nursing and rehabilitation services to the elderly. The petitioner stated that the facility has been in operation since 1975; has 93 employees including a professional staff of registered and vocational nurses; physical, speech, and occupational therapists; dieticians; recreational activities and social services workers; restorative certified nursing aides; and management professionals; and has a gross annual income of approximately \$10 million. The petitioner proposes to hire the beneficiary as a coordinator of patient support services, health information, and medical records for a three-year period, at the wage rate of \$21.00/hour, and listed the duties of the position as follows:

- Formulate a comprehensive, systematic, and scientific health information and management program for the entire health care facility.
- Draw up pertinent policies related to the management and use of health information and data generated by the records unit.
- Coordinate with the administration in the formulation of policies, regulations, procedures, and processes related to the management of personnel attached to the records unit.
- Oversee the management of the daily activities of the unit.
- Formulate action plans aimed at systematizing all record keeping, maintenance, and sharing activities.
- Recommend to management more efficient alternative procedures related to information and data-gathering.
- Propose to management creative ways to utilize more effectively and efficiently important health care information.
- Meet with task forces and committees that utilize data from the unit.
- Meet with the other units of the health care facility to coordinate the gathering and use of services rendered by the unit.
- Attend meetings of the management staff and assist in drawing up needed policies, programs of action, and strategies needed for a more effective and efficient management of the health care facility.
- Write up pertinent reports.
- Coordinate the provision of needed support services by all medical and paramedical units, including those involved in the nursing unit.
- Provide liaison work for the unit vis-à-vis the other units of the health care facility.

The beneficiary is qualified for the position, the petitioner declared, by virtue of his bachelor of science in medical technology from Centro Escolar University in Manila, the Philippines, awarded on May 15, 1995. According to the report of an academic credentials evaluation service in Coral Gables, Florida, the beneficiary's degree is equivalent to a bachelor of science in medical technology from an accredited U.S. college or university.

In response to the RFE the petitioner provided a more detailed description of the job duties, and the hours per week required by each duty. It reads as follows:

6 hours: Plan a comprehensive, systematic, and scientific health information and management program for the entire health care facility with the end in view of drawing up a short-term, medium-term, and long-term program of action for health information utilization and medical information management; such a program of action would require the acquisition and setting up

of necessary software and hardware; the putting in place of continuous training and technology; and the translation of these various plans into day-to-day processes and procedures in patient support services.

6 hours: Coordinate with the various units of the nursing center in the formulation of policies, regulations, procedures, and processes related to the management of personnel directly involved in various activities related to patient support services, health care information, and medical records management.

4 hours: Direct day-to-day health information needs of the nursing center especially in the preparation of health information bulletins on a daily basis, preparation of health information dissemination materials such as pamphlets and flyers.

4 hours: Direct the day-to-day medical recording activities of the unit especially those that pertain to the basic medical information from residents, symptoms, medical history, examinations and laboratory tests, diagnoses, treatment plans and the organization of such information and records for completeness and accuracy.

4 hours: Draw up action plans aimed at systematizing all record keeping, record maintenance, and record sharing activities. Create, execute, assess, and evaluate strategies required for a more efficient health information management, with the end in view of generating health and medical information needed in the service of clients including residents and their families.

4 hours: Attend and participate in meetings within the unit, among those involved in patient support services, and other meetings within the organization.

4 hours: Implement approaches to the optimization of support services especially along areas of coordination with relevant agencies both public and private in terms of meeting the specific needs of clients. Implement more efficient alternative procedures related to information and data-gathering by constantly assessing the relevance of forms, charts, logs, and other information gathering devices and checking whether these are compatible with the needs of medical, paramedical, and nursing personnel, and whether they are consistent with existing and planned changes in technology. Execute action plans designed to utilize efficiently important health care information and the dissemination of such information to the residents, their families, and the interested public.

4 hours: Coordinate the provision of needed support services by all medical and paramedical units, including those involved in the nursing unit such as the immediate access to required medical information on each patient, admission particulars, discharge schedules, continuing treatment schedules, follow-up schedules and records. Coordinate the provision of liaison work for the unit vis-à-vis the other units of the health care facility especially in areas related to information dissemination and records management.

4 hours: Write up pertinent reports required by the clients, the nursing center, and other institutions and agencies within and outside the nursing facility.

In his decision the director found that the duties of the proffered position reflect those of a first-line administrative services manager, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, 2004-05 edition. The director quoted information in the *Handbook* indicating that a bachelor's degree in a specific specialty is not the normal minimum requirement for entry into the occupation. The evidence of record, the director determined, failed to establish that the proffered position qualifies as a specialty occupation under any of the four criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal the petitioner asserts that the proffered position meets all four of the alternative criteria of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and refers to previously submitted documentation as evidence thereof.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* 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.

In accord with the director's decision, the AAO determines that the duties of the proffered position – coordinator of patient support services, health information, and medical records – are those of an administrative services manager, as described in the DOL *Handbook*. The occupation is described, in pertinent part, as follows in the *Handbook*, 2006-07 edition, at 25:

Administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services to organizations as diverse as insurance companies, computer manufacturers, and government offices. These workers manage the many services that allow organizations to operate efficiently, such as . . . administration . . . information and data processing . . . [and] records management . . .

Specific duties for these managers vary by degree of responsibility and authority. First-line administrative services managers directly supervise a staff that performs various support services. Mid-level managers, on the other hand, develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer service, and define the responsibilities of supervisory-level managers . . .

In small organizations, a single administrative services manager may oversee all support services. In larger ones, however, first-line administrative services managers often report to mid-level managers who, in turn, report to owners or top-level managers. As the size of the firm increases, administrative services managers are more likely to specialize in specific support activities . . .

The petitioner's organizational chart shows that the proffered position is in the patient support services division, which is subordinate to the vice president of technical services and support, which in turn is subordinate to the senior vice president for information systems/CIO. All three of these positions are below the petitioner's top executives. In view of its place in the corporate hierarchy, the AAO agrees with the director that the petitioner's coordinator of patient support services, health information, and medical records is a first-line administrative services manager, as described in the *Handbook*.

With respect to the educational requirements for administrative services directors, the *Handbook* states as follows:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. When an opening in administrative services management occurs, the office manager may be promoted to the position based on past performance. In large organizations, however, administrative services managers normally are hired from outside and each position has formal education and experience requirements. Some administrative services managers have advanced degrees.

Specific requirements vary by job responsibility. For first-line administrative services managers of secretarial, mailroom, and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience . . . . Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance . . . .

Whatever the manager's educational background, it must be accompanied by related work experience reflecting demonstrated ability. For this reason, many administrative services managers have advanced through the ranks of their organization, acquiring work experience in various administrative positions before assuming first-line supervisory duties . . . .

*Id.* at 26. What the *Handbook* makes clear is that a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into an administrative services manager position. A two-year associate degree, or relevant work experience without any educational degree, may suffice for many positions. Even for managers of highly complex services, the *Handbook* indicates that a baccalaureate degree in a variety of academic areas would be suitable. Based on the foregoing information, the AAO determines that a first-line administrative services manager, like that at issue in this petition, does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into such a position.

With regard to the second alternative criterion of a specialty occupation, at C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes several job postings from other companies. As discussed by the director in his decision, however, the companies are in different lines of business from the petitioner and the advertised positions differ significantly from the proffered position at issue in this proceeding. The AAO agrees with the director that the evidence of record does not show that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. Nor does the record demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the

job. The position is not unique, and the record does not show it to be unusually complex or beyond the scope of a typical first-line administrative services manager. The petitioner has not established that the subject matter of the job, or any other aspect of the position, cannot be performed by an individual with relevant work experience at a healthcare facility and/or an education that does not include a baccalaureate degree in a specific specialty. Accordingly, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the proffered position is newly created and the petitioner has no hiring history. Therefore, the petitioner cannot show that it normally requires a specialty degree or its equivalent for the position. The AAO notes, in addition, that the petitioner's job notice for the position, submitted with the petition, does not state that any educational degree is required. Accordingly, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not establish that the duties of the proffered position are so specialized and complex that they require knowledge usually associated with a baccalaureate or higher degree in a specific specialty. The job is not a high-level management position since there are multiple layers of authority above the proffered position. As far as the record shows, the nature of the duties does not involve such specialization and complexity that they could not be performed by an individual with an associate degree, a baccalaureate degree in an unrelated field, and/or relevant work experience at a healthcare facility that is not equivalent to a baccalaureate degree in a specialty. The AAO determines that the position does not qualify as a specialty occupation under the fourth alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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), and 8 C.F.R. § 214.2(h)(1)(ii)(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.