

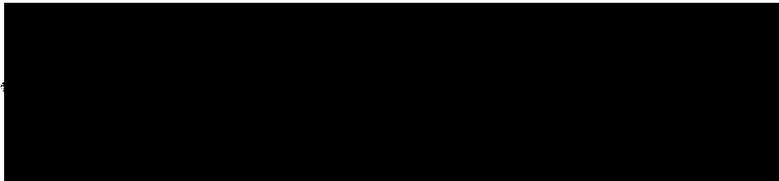
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U.S. Citizenship
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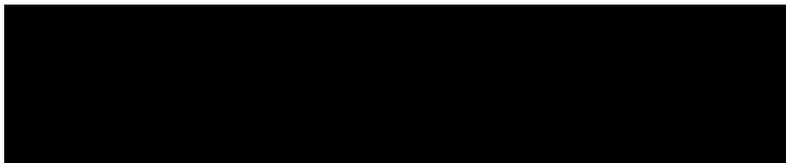
FILE: WAC 02 198 51264 Office: CALIFORNIA SERVICE CENTER Date: AUG 21 2006

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.

for *Michael T. Kelly*
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 is a health care center that seeks to employ the beneficiary as an associate administrator. 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(2) of 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 record of proceeding before the AAO contains, in part: (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 an associate administrator. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in nursing.

The director found that the beneficiary was not qualified for the proffered position, which the director determined to be that of a particular type of medical and health services manager, namely, a nursing home

administrator. The director denied the petition based on his determination that the beneficiary lacked a Nursing Home Administrator License from the State of California and a master's degree in an appropriate specialty. On appeal, counsel states, in part, that the beneficiary is qualified for the position because she holds a bachelor's degree in nursing (BSN), and that the Department of Labor's *Occupational Outlook Handbook (Handbook)* finds a BSN sufficient for an administrator of a nursing home facility. Counsel states further that the *Handbook* indicates that supervisory nurses with administrative abilities may fill the position of a nursing home administrator. Counsel also states that the beneficiary also holds a vocational nurse license issued by the State of California, and that this license allows the beneficiary to manage and direct the nursing home facility.

On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). In this case, the evidence of record, including the petitioner's organizational chart, indicates that the proffered position is that of an associate administrator, as opposed to that of a nursing home administrator.¹

The AAO concurs with counsel that the proffered position is a medical and health services manager position. Under the category of Medical and Health Services Managers, the *Handbook*, 2006-2007 edition, states:

A master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation for which a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is required. In this case, 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 U.S. master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration. 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 The AAO notes that if the proffered position were that of a nursing home administrator, as argued by counsel, the beneficiary would not be qualified to serve in that position. The State of California requires that its nursing home administrators be licensed as such (California Health and Safety Code sections 1416.2(5) and 1416.6), and licensing requirements include a master's degree in nursing home administration or a related health administration field. (California Health and Safety Code section 1416.22(a)(1)).

- (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.

The record contains an evaluation from a company that specializes in evaluating academic credentials, whose evaluator concluded that the beneficiary possesses the equivalent of a Bachelor of Science in Nursing (BSN) degree from an accredited U.S. university. On appeal, counsel states that the beneficiary also holds a foreign master's degree in guidance and counseling. The record, however, does not contain an evaluation of the beneficiary's foreign master's degree from a service that specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Further, the petitioner has not demonstrated that the beneficiary's foreign degrees are the equivalent to the required master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. 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 occupation²;

² *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;

- (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 also contains copies of the beneficiary's registered nurse license issued by the Philippines and her vocational nurse license issued by the State of California. This documentation does not establish that the beneficiary has the required master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration.

The AAO now turns to whether the evidence of the beneficiary's prior work experience clearly demonstrated that it included the theoretical and practical application of specialized knowledge required by the specialty. In a letter dated April 18, 2002, the petitioner's senior vice-president states, in part, that the beneficiary has over four years of related employment experience in the Philippines. The record, however, contains no evidence of this employment experience, such as letters from the foreign employers. 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 record also contains no evidence that the peers, supervisors, or subordinates with whom the beneficiary worked held a degree or its equivalent in the specialty occupation. Furthermore, the record contains no evidence of the recognition of expertise required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

In short, the record provides no basis for disturbing the director's decision. The petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation according to the standards of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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.

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.

(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).