

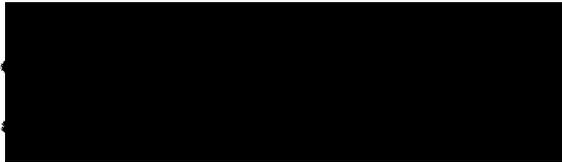
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U.S. Citizenship  
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Services

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*D/L*

FILE: SRC 04 212 51696 Office: TEXAS SERVICE CENTER Date: **AUG 29 2006**

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is an assisted living facility that seeks to employ the beneficiary as a health services manager and to classify her 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 basis that the beneficiary was not qualified to perform the duties of a specialty occupation. The director found that the beneficiary's nursing degree was not directly related to the position. A typographical error in the director's decision initially listed the position as general manager, but the director went on to identify the position as a medical health services manager. On appeal, counsel asserts that the director incorrectly reclassified the position and that the beneficiary is qualified for the position. Counsel submits a brief and additional evidence.

The issue before the AAO is whether the beneficiary is qualified to perform the duties of the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for further evidence (RFE); (3) the petitioner's response to the RFE; (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 lists the proposed position as a health services manager. Evidence of the beneficiary's duties includes the Form I-129 with a support letter, the response to the RFE, and counsel's brief on appeal. According to this evidence, the beneficiary's would:

Direct employee health services of the facility; interpret plant and departmental health policies and regulations to nursing staff and employees. Coordinates [sic] activities of personnel rendering assistance to physician[s] and nursing care to employees. Be responsible for the daily operation of a rehab team. Assist [the] Administrator for health information and medical record[s]. Establish work schedules for nursing staff and requisitions [sic] supplies. Recommend appointment of nursing personnel. Evaluate personnel and work.

The petitioner stated that the position required a bachelor's degree in nursing (BSN), health care, or a related field.

To determine whether an alien is qualified to perform the duties of a specialty occupation, CIS looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. 11842(i)(2) – full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or 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.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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 does not indicate that the beneficiary holds a U.S. baccalaureate or higher degree required by the proffered position. She does, however, possess a foreign degree that the petitioner asserts is the equivalent of a U.S. baccalaureate degree required by health service managers. To establish the beneficiary's academic qualifications to perform the duties of a health services manager, the petitioner has submitted copies of the beneficiary's diploma from Ortanez University in The Philippines, her academic transcripts from that institution, and an evaluation from Gerald L. Itzkowitz of Morningside Evaluations and Consulting. The evaluation concludes that the beneficiary holds the equivalent of a U.S. bachelor's degree in nursing. Based on its review of the record, the AAO concurs with the Morningside evaluation. The beneficiary's degree is the equivalent of a U.S. baccalaureate degree in nursing.

The petitioner indicates that it would like to employ the beneficiary as a manager, and cites the standards for facility licensure found at section 92.41 of the Department of Aging and Disability Services Licensing Standards, subchapter C. These standards state:

- (A) Qualifications. In small facilities, the manager must have proof of graduation from an accredited high school or certification of equivalency of graduation. In large facilities, a manager must have:
  - (i) an associate's degree in nursing, health care management, or a related field;
  - (ii) a bachelor's degree; or
  - (iii) proof of graduation from an accredited high school or certification of equivalency of graduation and at last one year of experience working in management or in health care industry management.

As an associate's degree in nursing or a bachelor's degree is sufficient for entry into the proffered position, the AAO finds the beneficiary's degree equivalency to establish her qualifications to perform the duties of a health services manager under section 92.41 of the Department of Aging and Disability Services Licensing Standards, subchapter C.

The petition may not be approved, however, as the record does not establish the proffered position 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.

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 bachelor’s or higher degree, but one in a specific field of study that is directly related to the proposed position.

Although the petitioner contends that the duties of the proffered position are those of a health services manager, the AAO finds them to be more closely aligned to the employment of nurse administrators, an occupation that the *Handbook* reports does not impose the minimum of a baccalaureate degree requirement on those seeking entry-level employment. Nurse administrators supervise nursing staff, establish work schedules and budgets, and maintain medical supply inventories. According to the petitioner’s description, the beneficiary will “interpret plant and departmental health policies to nursing staff and employees,” “coordinate activities of personnel rendering assistance to physicians,” and “establish work schedules for nursing staff and requisition supplies,” much like a nurse administrator.<sup>1</sup>

On appeal, counsel submits material related to licensing standards for Types A, B, and E assisted living facilities in Texas, which indicates that the managers of assisted living facilities must hold an associate’s degree in nursing, health management, or a related field; a bachelor’s degree; or proof of graduation from high school (or its equivalent) and at least one year of experience working in management or in health care industry management. This material undermines the petitioner’s contention that the proffered position is a specialty occupation. As noted above, in order for a position to be considered a specialty occupation, it must require a bachelor’s or higher degree in a specific field of study as a minimum for entry into the occupation. If, as counsel appears to contend, the proffered position’s degree requirement is comparable to that of a manager of an assisted living facility then it is not a specialty occupation since it may be performed by individuals with less than a baccalaureate degree in a directly-related field.

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<sup>1</sup> The record does not establish that the beneficiary is qualified to perform the duties of a nurse administrator. Nurse administrators require licensure in all 50 states, including Texas. The record does not establish that the beneficiary is a licensed registered nurse in Texas.

As the director has not determined whether the proffered position may be established as a specialty occupation, the petition will be remanded.

For reasons related in the preceding discussion, the AAO will withdraw the director's decision and remand the instant case to the director for a decision as to whether the proffered position qualifies as a specialty occupation. The director may request such evidence as may be necessary to assist in reaching that determination. The director shall then issue a new decision based on the evidence of record, as it relates to the statutory and regulatory requirements for H-1B nonimmigrant visa eligibility.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision of January 14, 2005 is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, shall be certified to the AAO for review.