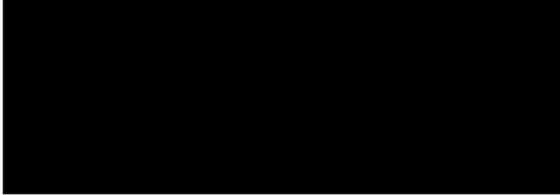




U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 227 54040 Office: NEBRASKA SERVICE CENTER Date: **APR 12 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, Director
Administrative Appeals Office

DISCUSSION: The director of the 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 provides nursing staff and it seeks to employ the beneficiary as a supervisory nurse. The petitioner, therefore, 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional and previously submitted evidence.

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) the 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 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 supervisory nurse. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to the petitioner's July 22, 2004 letter, the beneficiary would perform duties that entail assessing the skills of Indian nursing candidates and the needs of the petitioner's United States clients; monitoring the performance of Indian nurses and training them on an on-going basis; performing nursing services for clients of the petitioner so as to enable the beneficiary to maintain her nursing skills and understand the needs of healthcare providers in the United States. The submitted document entitled "Job Description" includes the duty of maintaining a log of the nurses placed in the United States with clients. The petitioner requires a baccalaureate degree (or its equivalent) in nursing or a related discipline, and the ability to speak the English and Hindi languages.

The director stated that the petitioner is an employment agency or consulting firm that provides contract employees to other businesses, and that its client, Resource One, is also a consulting company that furnishes contract employees to other businesses. The director stated that the ultimate employment of the beneficiary must be examined to determine whether the proposed position qualifies as a specialty occupation. According to the director, in *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000), the court held that the Immigration and Naturalization Service, now CIS, reasonably interpreted the statute and the regulations when it required the petitioner to show that the entities ultimately employing the foreign nurses require a bachelor's degree for all employees in that position. The court found that the degree requirement should not originate with the employment agency that brought the nurses to the United States for employment with the agency's clients. Resource One, the director stated, claims the beneficiary will perform supervisory nursing duties for its client, Henry Ford Hospital. The director stated that the petitioner did not submit a copy of the agreement between Resource One and Henry Ford Hospital, and that without this document he could not find that the proffered position qualifies as a specialty occupation. The director concluded that the petitioner established none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that *Defensor* is distinguishable from the petition offered here. According to counsel, the employment agency, Resource One, has a contractual agreement with the petitioner which states that Resource One will pay the beneficiary's salary in exchange for her services as a supervisory nurse. Counsel asserts that although Resource One was to place the beneficiary at the Henry Ford Hospital, the beneficiary was also to have performed services for Resource One itself, such as supervising, teaching, evaluating, and analyzing and monitoring nurses. Counsel states that in *Defensor* the employment agency did not retain any of the services of the nurses. According to counsel, because Resource One retains the beneficiary's services, it remains the beneficiary's actual or ultimate employer. Counsel maintains that a contract between Resource One and Henry Ford Hospital is not required as the beneficiary will perform services directly for Resource One and Resource One will pay her salary. Counsel states that the beneficiary must take the NCLEX exam, which cannot be taken in India, before a contract can be finalized with Henry Ford Hospital. Counsel contends that the position offered here is that of a supervisory nurse; it is not an ordinary nurse, which was the position in *Defensor*. Counsel states that Resource One's requirement that all

nurses possess a bachelor's or higher degree is reasonable in light of the complexity and specialized duties associated with a supervisory nurse. According to counsel, as there is no specialty degree for a supervisory nurse, the required skills are attained through a combination of experience and education. Counsel maintains that the proposed duties, such as speaking Hindi, exceed those of an ordinary nurse. Counsel discusses *Tapis Int'l vs. INS*, 94 F. Supp. 2d 172 (D. Mass. Apr. 2000), and states that the beneficiary's education, work experience, and knowledge of the Hindi language qualify her for the proposed position.

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.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook* (the *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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The AAO finds an inconsistency in the submitted evidence as to the services the beneficiary will perform and for whom they will be performed. The contract entered into on November 25, 2003 between the petitioner and Resource One states that the petitioner will provide nurses for Resource One for placement within the healthcare industry; the nurses will be placed with Resource One for one year; Resource One will be responsible for their day-to-day employment needs after they enter the country; and Resource One has the right of first refusal with nurses supplied by the petitioner. An undated letter from Resource One states that the beneficiary will be employed by Resource One as a supervisory nurse on terms consistent with the contract dated April 30, 2004 between the beneficiary and the petitioner, that the beneficiary will perform nursing services for Resource One's client, the Henry Ford Hospital, and will supervise and monitor the performance of Indian nurses. The AAO observes that the record does not contain a contractual agreement between Resource One and the Henry Ford Hospital; and that the undated letter conflicts with the beneficiary's duties described by the petitioner in the April 30, 2004 document entitled "Job Description" and the July 22, 2004 letter of support, as these documents portray the beneficiary as performing services for the petitioner and its clients. On appeal, counsel states that the beneficiary will perform services for Resource One and that she may be placed at the Henry Ford Hospital. In light of the inconsistencies in the evidence, the AAO cannot determine the duties the beneficiary will ultimately perform or for whom they will be performed. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective

evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). No evidence in the record explains or resolves the inconsistencies in the record. The AAO cannot determine the beneficiary's ultimate duties and whether they qualify as those of a specialty occupation.

In the denial letter, the director stated that the court in *Defensor* held that the petitioner needs to show that the entities ultimately employing the beneficiary must require a bachelor's degree for all employees in that position, and that the degree requirement should not originate with the employment agency that brings the alien worker to the United States for employment with its clients. In light of *Defensor*, the director correctly determined that a contract or agreement between Resource One and the Henry Ford Hospital, where Resource One claimed that the beneficiary will provide services, was needed to establish that the proffered position qualifies as a specialty occupation.

Counsel distinguishes *Defensor* from the instant petition by stating that even though the beneficiary was to be placed at the Henry Ford Hospital, Resource One was to retain the beneficiary's services by having her perform duties directly for Resource One. Counsel's assertion is not persuasive as the undated letter from Resource One conveys that the beneficiary will perform nursing services for Henry Ford Hospital, although she will also provide nursing training and refresher courses to Resource One's nurses. The record contains no evidence of a contractual agreement between Henry Ford Hospital and Resource One regarding the beneficiary's services; thus, the AAO cannot determine whether the duties that the beneficiary will perform for the hospital are those of a specialty occupation.

Furthermore, the AAO notes that the duties described by the petitioner on page three of this decision, which are the duties that Resource One claims the beneficiary will provide for its company, correspond to the duties of a registered nurse (RN) as that occupation is depicted in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). According to the *Handbook*, RNs "perform basic duties that include treating patients." Nurse educators are portrayed in the *Handbook* as teaching student nurses and providing continuing education for RNs, and nurse administrators as supervising nursing staff. Similarly, the beneficiary will perform nursing services for patients; and assess the skills of Indian nursing candidates, monitor their performance, and train them.

The *Handbook* conveys that RNs, including nurse administrators and nurse educators, do not require a bachelor's degree in a specific specialty. 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.

The AAO notes that counsel contends that Resource One has a requirement that all nurses possess a bachelor's or higher degree. However, the record contains no independent documentary evidence that substantiates his contention. 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)).

A baccalaureate degree in a specific specialty is not needed in order to speak the English and Hindi languages, which is one of the proposed duties. The *Handbook* describes an interpreter as follows:

Interpreters and translators enable the cross-cultural communication necessary in today's society by converting one language into another. However, these language specialists do more than simply translate words—they relay concepts and ideas between languages. They must thoroughly understand the subject matter in which they work so that they are able to convert information from one language, known as the source language, into another, the target language. In addition, they must remain sensitive to the cultures associated with their languages of expertise.

Interpreters and translators are often discussed together because they share some common traits. For example, both need a special ability, known as language combination. This enables them to be fluent in at least two languages—a native, or active, language and a secondary, or passive, language; a small number of interpreters and translators are fluent in two or more passive languages. Their active language is the one that they know best and into which they interpret or translate, and their passive language is one of which they have nearly perfect knowledge.

Although some people do both, interpretation and translation are different professions. Each requires a distinct set of skills and aptitudes, and most people are better suited for one or the other. While interpreters often work into and from both languages, translators generally work only into their active language.

Interpreters convert one spoken language into another—or, in the case of sign-language interpreters, between spoken communication and sign language. This requires interpreters to pay attention carefully, understand what is communicated in both languages, and express thoughts and ideas clearly. Strong research and analytical skills, mental dexterity, and an exceptional memory also are important.

The *Handbook* describes the educational requirements of interpreters as follows:

The educational backgrounds of interpreters and translators vary. Knowing a language in addition to a native language is essential. Although it is not necessary to have been raised bilingual to succeed, many interpreters and translators grew up speaking two languages.

In high school, students can prepare for these careers by taking a broad range of courses that include English writing and comprehension, foreign languages, and basic computer proficiency. Other helpful pursuits include spending time abroad, engaging in comparable forms of direct contact with foreign cultures, and reading extensively on a variety of subjects in English and at least one other language.

Beyond high school, there are many educational options. Although a bachelor's degree is often required, interpreters and translators note that it is acceptable to major in something other than a language. However, specialized training in how to do the work is generally required. A number of formal programs in interpreting and translation are available at colleges nationwide and through nonuniversity training programs, conferences, and courses. Many people who work as conference interpreters or in more technical areas—such as localization, engineering, or finance—have master's degrees, while those working in the community as court or medical interpreters or translators are more likely to complete job-specific training programs.

Based on the *Handbook's* information, the proposed interpretation duties would not require a baccalaureate degree in a specific specialty.

For the reasons discussed in this decision, the petitioner establishes none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific degree requirement is common to the industry in parallel positions among similar organizations; the proffered position is so complex or unique that it can be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or 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.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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.