

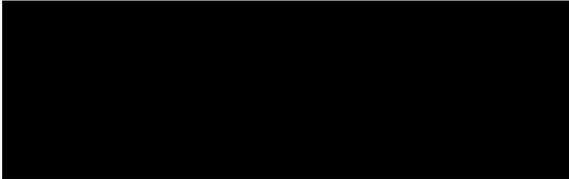
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 090 51623 Office: CALIFORNIA SERVICE CENTER Date: JAN 11 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 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 an intermediate facility for the developmentally disabled that seeks to employ the beneficiary as a health services coordinator. 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 on the basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation and that the beneficiary does not qualify to perform the duties of a specialty occupation.

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 for evidence; (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.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 proposed position.

The petitioner's February 2, 2004 letter of support stated that the beneficiary would "deal with" the interpretation, analysis, and implementation of quality control standards in the health services provided by the petitioner's health staff and personnel, which would involve extensive analysis of health services agreements, contracts, and the comprehensive implementation of the petitioner's goal in the operation of the petitioner's facility. The beneficiary would also develop a standard policy to be followed by the facility's health care staff; schedule or monitor that each member of the health care staff has the requisite training, instruction, or continuing education to fully comply with the quality standards imposed by state and local regulations and the proper standard of care as expected by each patient in the facility; develop an effective communication/information system between the client, care staff, and personnel in order to monitor, avoid, and eventually eliminate tardiness, absenteeism, and truancy among the healthcare staff, and ensure that the system is implemented and followed; analyze the facility's requirements in determining the training and instruction appropriate and needed by the health care staff so as to update them with the latest medical breakthroughs, equipment, and procedures; improve on existing policies in handling complaints and suggestions by clients and patients; and review health care staff performance. The petitioner stated that a qualified candidate for the proposed position would possess a bachelor's degree in nursing or any health care-related field, the sciences, or business administration with a medical background.

In determining whether a proposed 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 routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

While the petitioner calls the proposed position a health services coordinator, the duties of the position are similar to those of a health services manager as that position is described in the *Handbook*. The *Handbook* states that the general requirement for a health services manager is a master's degree, but that a bachelor's degree is adequate for some entry-level positions in smaller organizations; it also states, "Physician's offices and some other facilities may substitute on-the-job experience for formal education." Thus, in many instances, a health services manager is a specialty occupation.

The petitioner reports that it has 19 employees, a gross annual income of \$980,000, and a "variable" net annual income. The petitioner is not a physician's office, and the AAO is unable to determine whether the proposed position is an entry-level position in a smaller organization, as the petitioner has not addressed the size of its facility in relation to other intermediate facilities for the developmentally disabled, or indicated that the position is entry-level. Thus, the educational requirement for the proposed position would be a master's degree. Therefore, the proposed position qualifies as a specialty occupation

under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree or its equivalent is the normal minimum entry requirement.

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.

As noted previously, the AAO has determined that the proposed position resembles a health services manager, as that occupation is discussed in the *Handbook*. The petitioner indicated in its letter of support that it wishes to hire the beneficiary because she possesses the equivalent of a bachelor's degree in nursing and "over three years of experience in many areas of the nursing field."

The AAO has determined that the beneficiary is not qualified to perform the duties of a health services manager. The petitioner has established that the beneficiary has the equivalent of a baccalaureate degree in nursing from a U.S. college or university. However, the specialty occupation requires a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration, according to the *Handbook*.

The petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration. 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 master's degree from a U.S. college or university in any field of study. 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) 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.

On appeal, counsel states that the beneficiary's education and experience qualify her to perform the duties of the proposed position. Counsel also states that CIS has approved previous petitions that were similar to the instant petition.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), in order to establish equivalence to a master's degree, the beneficiary must have a baccalaureate degree followed by at least five years of experience in the specialty. 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 occupation¹;

¹ *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; (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).

- (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 contains an evaluation of the beneficiary's education from the Global Education Group, Inc., which found the beneficiary's foreign degree equivalent to a bachelor's degree in nursing from a regionally accredited college or university in the United States. The record also contains information regarding her previous work experience.

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. A letter from the Makati Medical Center indicates that the beneficiary worked at this institution as a staff nurse from June 2001 through January 2004. The petitioner's letter of support stated that she had worked at St. Luke's Hospital "for a while," but no further information regarding this employment was provided.

There is no evidence in the record to suggest that the beneficiary's previous work experiences involved the theoretical and practical application of health services management. The AAO therefore cannot conclude that her past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is health services management. Furthermore, none of the employers indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. There is also no evidence to suggest that the beneficiary has recognition of expertise in the field of health services management, as required by the regulations.

As related in the preceding discussion, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proposed position. Accordingly, the AAO will not disturb the director's denial of the petition.

Regarding the petitioner's assertion that similar petitions were previously approved, the record of proceeding does not contain copies of the visa petitions that the petitioner claims were previously approved. However, if the referenced nonimmigrant petitions were approved based upon the same assertions contained in the current record, their approvals would constitute clear and gross error on the part of CIS. CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987); *cert. denied* 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between the court of appeals and the district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.