



U.S. Citizenship  
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Services

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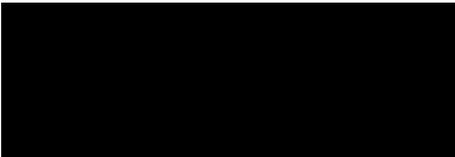
FILE: WAC 04 135 50478 Office: CALIFORNIA SERVICE CENTER Date: JUN 06 2006

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 is a home health agency that seeks to employ the beneficiary as a health services specialist. 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.

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) 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 a health services specialist. 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 this evidence, the beneficiary would perform duties that entail reviewing the quality of health services delivered by healthcare professionals, assistants, and aides to patients and residents so as to assess if the services meet Home Health Agency's health standards; conducting research studies on current innovations and updates; attending conferences and seminars about home healthcare, assisted living, and rehabilitative and wellness health services so as to improve efficiency and benefits offered to patients; managing client records; evaluating the present information processing system and developing one that improves operating procedures, data storage and retrieval, and workflow and daily activities; overseeing billing and collections procedures and heading budget deliberations and planning; preparing reports and recommendations for management so as to establish more diligent and accurate standard operating procedures and programs; supervising and participating in developing and implementing mechanisms and procedures for manpower hiring and performance evaluations; and preparing workflow charts, diagrams, and procedural bulletins for personnel. Counsel's response to the request for evidence elaborated on the proposed duties. The petitioner requires a baccalaureate degree in nursing or a related field.

The director stated that the proposed position resembles a registered nurse as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this occupation does not require a bachelor's degree in a specific specialty. The director concluded that the petitioner satisfied none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the beneficiary is qualified for the proposed position as she holds the educational equivalent of a bachelor's degree in nursing. Counsel asserts that the beneficiary will review the current healthcare systems so as to improve patient services. According to counsel, CIS has previously recognized a health services specialist as a specialty occupation.

Upon review of the record, the petitioner has failed to establish one 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.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the 2006-2007 edition of 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)).

The AAO finds that the proposed duties are those of a nurse that is involved in the business side of health care. The *Handbook*, a resource that CIS often looks to when determining the qualifications for particular occupations, describes this type of nurse as follows:

Some nurses move into the business side of health care. Their nursing expertise and experience on a health care team equip them to manage ambulatory, acute, home-based, and chronic care. Employers—including hospitals, insurance companies, pharmaceutical manufacturers, and managed care organizations, among others—need RNs for health planning and development, marketing, consulting, policy development, and quality assurance. Other nurses work as college and university faculty or conduct research.

According to the petitioner, the beneficiary will review the quality of health services; conduct research studies on current innovations and updates; attend conferences and seminars about home healthcare, assisted living, and rehabilitative and wellness health services so as to improve efficiency and the benefits offered to patients; manage client records; evaluate the present information processing system and develop one that improves operating procedures, data storage and retrieval, and workflow and daily activities; oversee billing and collections procedures and head budget deliberations and planning; prepare reports and recommendations for management to improve standard operating procedures and programs; supervise and participate in developing and implementing mechanisms and procedures for hiring and performance evaluations; and prepare workflow charts, diagrams, and procedural bulletins for personnel. The beneficiary's duties are encompassed within the aforementioned areas of health planning and development, policy development, and quality assurance.

The *Handbook* describes qualification requirements of a nurse as follows:

In all States and the District of Columbia, students must graduate from an approved nursing program and pass a national licensing examination, known as the NCLEX-RN, in order to obtain a nursing license. Nurses may be licensed in more than one State, either by examination or by the endorsement of a license issued by another State. Currently 18 States participate in the Nurse Licensure Compact Agreement, which allows nurses to practice in member States without recertifying. All States require periodic renewal of licenses, which may involve continuing education.

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. BSN programs, offered by colleges and universities, take about 4 years to complete. In 2004, 674 nursing programs offered degrees at the bachelor's level. ADN programs, offered by community and junior colleges, take about 2 to 3 years to complete. About 846 RN programs in 2004 granted associate degrees. Diploma programs, administered in hospitals, last about 3 years. Only 69 programs offered diplomas in 2004. Generally, licensed graduates of any of the three types of educational programs qualify for entry-level positions as staff nurses.

Based on the *Handbook's* information, a nurse involved in the business side of health care would not require a baccalaureate degree in nursing; however, the nurse would require licensure.

Counsel asserts that a health services specialist qualifies as a specialty occupation since CIS has approved other, similar petitions in the past, and he submits copies of documents relating to other petitions. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service centers in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the position offered here is parallel to those of the prior cases.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior cases were similar to the proffered position or were approved in error, no such determination may be made without review of the original record in its entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petitions would have been erroneous. CIS is not required to approve 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). Neither CIS nor any other 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).

Based on the *Handbook's* information and the evidence in the record, the AAO finds the position presented here would normally not require a baccalaureate degree in nursing or a related field. Consequently, the offered position would not require a baccalaureate or higher degree or its equivalent in a specific specialty as the normal minimum requirement for entry into the particular position, which is the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) the petitioner must show that a degree requirement is common to the industry in parallel positions among similar organizations. No evidence in the record establishes the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) the petitioner must establish that the particular position is so complex or unique that it can be performed only by a person with a degree. The evidence of record does not establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner establish that it normally requires a degree or its equivalent for the position.

To establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) the petitioner must show that the nature of the specific duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree. The evidence of record fails to establish

the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The organizational chart submitted in support of the petition indicates that the beneficiary will report directly to the director of patient care services, who is a baccalaureate degree nurse. The offered position, according to the chart, will directly supervise a licensed vocational nurse in the position of patient care coordinator. The petitioner has not established that the duties are of a level of competency that would require a baccalaureate degree in a specialty.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

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.