

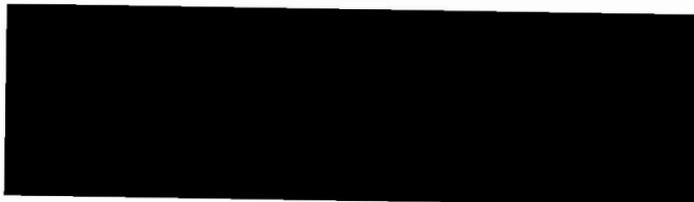
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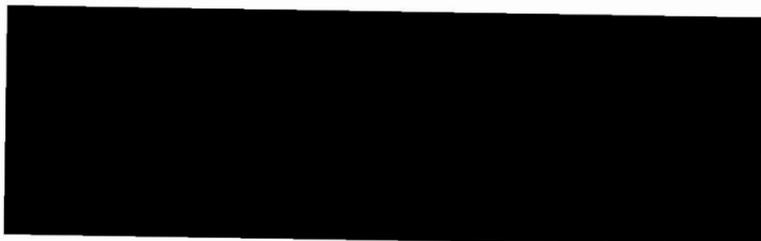
FILE: WAC 01 044 50817 Office: CALIFORNIA SERVICE CENTER Date: MAR 16 2006

IN RE: Petitioner:  
Beneficiary:



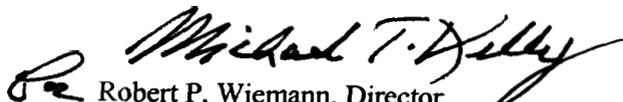
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 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 provides long-term and post acute nursing care and seeks to employ the beneficiary as a case 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 because the proposed position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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 degree or higher degree, but one in a specific field of study directly related to the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation which includes an employer support letter, a list of assets and liabilities, the beneficiary's passport, resume, college transcripts, and bachelor's degree (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE which includes seven case worker job announcements; (4) the director's denial letter; and (5) Form I-290B and accompanying brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a case manager. Evidence of the beneficiary's duties includes the Form I-129 with supporting documentation and the petitioner's response to the RFE. According to this evidence, the beneficiary would perform duties that entail: reviewing and correcting all medical bills and reports prior to submission to insurance companies; planning, developing and administering a health

information system; developing and implementing policies and procedures for documenting, storing, and retrieving information and for processing medical/legal documents, insurance data, and correspondence requests; supervising staff in preparing medical documents; evaluating medical records from referral site; educating staff and external contacts regarding the facility's managed care delivery systems; overseeing all aspects of each managed care's patient's program from pre-admission assessment through post discharge; establishing and maintaining open, effective communication between the petitioner and referring public, consumers, physicians, and third party payers; communicating with and effectively influencing the treatment team's approach to care; maintaining a positive relationship with third party payers; managing contractual and out-of-contract agreements as they relate to levels of care and treatment parameters; working with payer sources to verify and guarantee coverage and identify all items required to process the claim; working with payer sources to creatively explore and negotiate coverage solutions and additional benefits; assisting with facility and community education; ensuring initial and on-going fiscal appropriateness of all managed care patient admissions; monitoring expense versus revenue for managed care patients on a daily basis; performing on-site assessment of potential admissions; along with the director of nursing and the rehabilitation manager, ensuring the establishment of a treatment plan which is timely, cost effective and based on prioritized functional objectives; meeting with patients' families and rehab team to assist in meeting care plan goals and objectives; coordinating the weekly interdisciplinary team meetings and plan of treatment for managed care patients; monitoring patient progress and communicating relevant information to patients' families, payer source, and clinical team; participating in plans for discharge with social services and rehab team; developing and maintaining relationships with referral sources and other case managers; acting as liaison between the health care team members and referring physician, acute hospital, discharge planner, social worker, utilization review nurses, rehab case manager, etc.; participating in goal planning with the rehabilitation department; communicating effectively with the community and facility staff regarding services available at healthcare centers; discussing all controversial issues that arise with specific patients or within specific managed care contracts with the director of case management/director of contracting; providing timely feedback to the organization regarding payer trends, competitive trends, quality perceptions, and client satisfaction; ensuring completion and distribution of weekly conference notes to all appropriate parties; participating in community and industry-based case management organizations.

The petitioner stated that these duties required that the beneficiary be not only college educated but also that she be familiar with medical terms, costs of medicines, and possess a degree in medicine or a degree in nursing.

The director found that the proposed position was that of a nurse and that the requisite nursing degree is a lower level degree than a bachelor's degree. The director noted that it was not common in the industry to require nurses to possess bachelor's degrees. The director further noted that the duties and responsibilities of the proposed position did not indicate a complexity or authority beyond what is normally required of those who held nursing degrees. The director concluded that the petitioner had not established that the position met the requirements for a specialty occupation.

On appeal, counsel asserts that a bachelor's of science in nursing (BSN) degree is the minimum requirement for entry into case manager positions. Counsel asserts that the nature and complexity of case manager positions requires four-year BSN degrees and that this requirement is common to the industry. Counsel further asserts that the petitioner, as a matter of policy, requires the beneficiary to hold a bachelor's degree. Finally, counsel asserts that the nature of the position is so complex that the knowledge required to perform it is associated with the attainment of a bachelor's degree.

Upon review of the record, the AAO concludes that the petitioner has failed to establish that its case manager position meets any of the four criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A).

To determine whether or not 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 highly specialized knowledge. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties of particular occupations.

Based on the entire record of proceeding, the AAO finds that the proposed duties reflect those of a combination of the duties of a case manager, nurse administrator, and nurse informacist. According to the *Handbook*:

Some nurses have jobs that require little or no direct patient contact. Most of these positions still require an active RN license. *Case managers* ensure that all of the medical needs of patients with severe injuries and illnesses are met, including the type, location, and duration of treatment. . . . *Nurse administrators* supervise nursing staff, establish work schedules and budgets, and maintain medical supply inventories. . . . *Nurse informacists* collect, store, and analyze nursing data in order to improve efficiency, reduce risk, and improve patient care. . . .

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.

To determine whether or not a position qualifies as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the AAO looks to the *Handbook* to see if the attainment of a bachelor's degree in a specific field of study is normally the minimum for entry into the occupation. The *Handbook* notes that the most significant source of education for nurses is graduation from an approved nursing program. The *Handbook* also notes that the length of nursing programs varies from between two and four years. Also, most registered nurses begin as staff nurses, and with experience and good performance are often promoted to more responsible positions. 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. Since employers hire nurses with two, three, or four-year diplomas or degrees, the petitioner failed to establish that a bachelor's degree in nursing or a related field is normally the minimum requirement for entry into the proposed position. Accordingly, the petitioner has not satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) - a degree requirement is common to the industry in parallel positions among similar organizations. The job announcements from *Nurse Week* provided by the petitioner do not support the contention that the nursing home industry requires that case managers/nurse administrators/nurse informaticists hold BSN degrees or bachelor's degrees in related fields. None of the announcements required a BSN degree. Instead, they required that the applicants be licensed registered nurses, which is different. One of the announcements preferred a BSN degree but did not require it. None of these announcements support's counsel's assertion that nursing homes, similar in size and scope to the petitioner's, require a BSN for these positions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a bachelor’s degree or its equivalent for the position. This criterion is not a factor in this proceeding as the petitioner implies that the position is being offered for the first time in order to relieve the center’s “overloaded” director of nursing of her case manager duties. As the record does not contain any evidence of the petitioner’s past recruiting and hiring practices, the petitioner has not met its burden of proof in this regard.

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. The second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) is satisfied by establishing that a particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor’s or higher degree in a specific field of study. Counsel asserts, without substantiating evidence, that the proposed position is so complex that it requires a person with a BSN degree, and that the nature of the position is so complex that the knowledge required to perform it is associated with the attainment of a bachelor’s degree. To the extent that they are depicted in the record, the duties of the proposed position are routine for the nurse/case manager occupation, which the *Handbook* indicates may be performed by persons without BSN’s or bachelor’s degrees in related fields. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. ***Matter of Obaigbena***. **The petitioner has not established that the proposed position is a specialty occupation based upon the complexity or uniqueness of its duties.**

The AAO notes that on November 27, 2002, CIS issued a policy memorandum on H-1B nurse petitions (nurse memo) and acknowledged that an increasing number of nursing specialties require a higher degree of knowledge and skill than a typical registered nurse staff nurse position.<sup>1</sup> In this matter, however, nothing in the proposed position’s job description indicates that the beneficiary would be working in a nursing specialty that requires a higher degree of knowledge or skill than that possessed by a registered nurse without a bachelor’s degree. As stated previously, the duties of the position are routine. An individual who does not possess a bachelor BSN or its equivalent would be able to successfully execute the duties that the petitioner describes.

Beyond the decision of the director, the proposed position appears to require California state licensure because of its involvement in supervision of nursing care, e.g., “overseeing all aspects of each managed care’s patient’s program from pre-admission assessment through post discharge” and treatment planning of managed care patients. According to the *Handbook*, 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. The record contains no evidence that, at the time the petition was filed, the beneficiary was licensed to practice as a nurse in California, the location of the proposed position. The beneficiary has therefore failed to meet the licensure requirements stated at 8 C.F.R. § 214.2(h)(4)(v). For this reason also, the petition must be denied.

As related in the discussion above, the petitioner has failed to establish that the proposed 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.

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1 Memorandum from Johnny N. Williams, Executive Associate Commissioner, INS Office of Field Operations, Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses, HQISD 70/6.2.8-P (November 27, 2002).

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**ORDER:** The appeal is dismissed. The petition is denied.