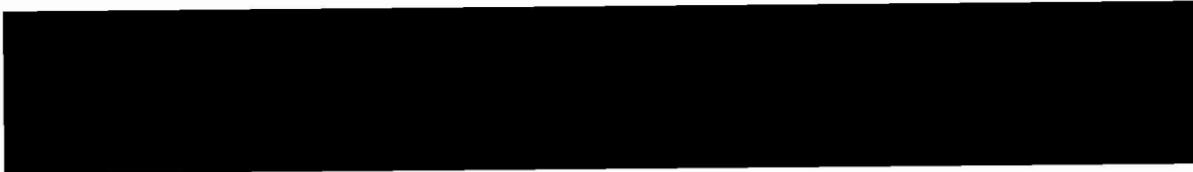




U.S. Citizenship
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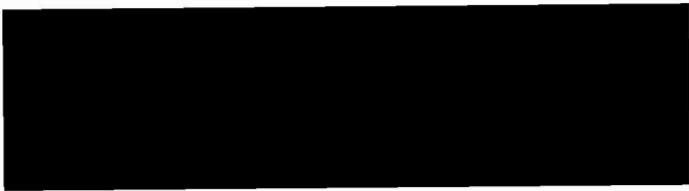
Dr

FILE: WAC 03 225 55770 Office: CALIFORNIA SERVICE CENTER Date: **MAR 28 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.

For Michael T. Kelly
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 sustained. The petition will be approved.

The petitioner is a skilled nursing and rehabilitation services facility that seeks to employ the beneficiary as a rehabilitation services coordinator. The petitioner, therefore, endeavors to extend the beneficiary's classification 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 beneficiary qualifies to perform the duties of the 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 (RFE); (3) the petitioner's RFE response; (4) the director's first denial letter, dated January 12, 2004; (5) the petitioner's motion to reopen; (6) the director's second denial, dated August 27, 2004; and (7) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The first issue to be addressed is whether the proposed position qualifies as a specialty occupation. Although the director did not deny the petition on this basis, the AAO disagrees with the director's analysis of the issue and will engage in its own analysis.

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, a skilled nursing and rehabilitation services facility with 152 employees, was established in 2000 and has a gross annual income of \$7,755,033. It proposes to hire the beneficiary as a rehabilitation services coordinator. In its July 18, 2003 letter of support, the petitioner set forth the duties of the proposed position as follows:

[The beneficiary] will report directly to the Director of Rehabilitation Services for the [REDACTED]¹ and as such she will plan, administer, and direct the operation of health rehabilitation programs including physical, occupational, recreational[,] and speech therapies. She will confer with members of physical, occupational, recreational[,] and speech therapies staff and other health care team members, individually and in conference, to exchange, discuss[,] and evaluate patients’ information for planning, modifying[,] and coordinating rehabilitation treatment programs. She will allocate staff on [the] basis of workload, space[,] and equipment available. She will facilitate appropriate delivery of services to patients and families in need of inpatient rehabilitation through the effective management of facility resources.

[The beneficiary] will analyze operating costs and will prepare [the] department budget. She will recommend patient fees for therapy based on use of equipment and therapy staff. She will also coordinate research projects to develop new approaches to rehabilitative therapy and be updated on the latest issues and development regarding various types of health rehabilitation programs.

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. In ruling that the proposed position is not a specialty occupation, the director found that the duties of the proposed position were essentially those of a health services manager, specifically those of a nursing home administrator.

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

¹ The petitioner is one of 24 health care facilities owned and operated by the [REDACTED]

Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

A review of the duties of the proposed position finds closely aligned to the responsibilities of medical and health services managers. As discussed in the 2006-2007 edition of the *Handbook*:

Healthcare is a business and, like every other business, it needs good management to keep it running smoothly. Medical and health services managers, also referred to as *health care executives* or *health care administrators*, plan, direct, coordinate, and supervise the delivery of health care. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system.

The structure and financing of healthcare is changing rapidly. Future medical and health services managers must be prepared to deal with evolving integrated healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work, and an increased focus on preventive care. They will be called upon to improve efficiency in healthcare facilities and the quality of the healthcare provided. Increasingly, medical and health services managers will work in organizations in which they must optimize efficiency of a variety of interrelated services—for example, those ranging from inpatient care to outpatient followup care.

Clinical managers have training or experience in a specific clinical area and, accordingly, have more specific responsibilities than do generalists. For example, directors of physical therapy are experienced physical therapists, and most health information and medical record administrators have a bachelor's degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

In that the proposed position appears closely aligned to that of a medical and health services manager, the AAO next turns to the *Handbook's* discussion of whether the occupation normally requires a baccalaureate or higher degree, or its equivalent, for entry into the profession. The *Handbook* reports the following educational requirements for those seeking employment as medical and health services managers:

Medical and health services managers must be familiar with management principles and practices. A master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities. . . .

For persons seeking to become heads of clinical departments, a degree in the appropriate field and work experience may be sufficient early in their career. However, a master's degree in health services administration or a related field might be required to advance. For example, nursing service administrators usually are chosen from among supervisory registered nurses with administrative abilities and a graduate degree in nursing or health services administration.

The petitioner is a skilled nursing and rehabilitation services facility with 152 employees. Its staff is comprised of registered nurses, physical therapists, physical therapist assistants, electroneuromyographers, as well as other professionals and administrative staff. As the beneficiary would supervise the facility's rehabilitation services, the AAO finds that the educational requirements for the position would be similar to those of a clinical department head. According to the *Handbook*, a degree in the appropriate field and work experience are sufficient for entry for clinical department heads.

The AAO disagrees with the director's characterization of the proposed position as that of a nursing home administrator and finds no support in the record for such a conclusion. While the petitioner is a skilled nursing and rehabilitation services facility, the beneficiary would not supervise the entire facility; she would supervise its rehabilitation services only. Therefore, nursing home administrator licensure is irrelevant for this position.

As such, the proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The record reflects that the beneficiary earned a bachelor's degree in physical therapy from the [REDACTED] in the Philippines, in 1999. According to an evaluation contained in the record, this degree is equivalent to a bachelor's degree in physical therapy from an accredited college or university in the United States. Therefore, she is qualified to perform the duties of this specialty occupation.

The petitioner has established that the proposed position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the appeal will be sustained, and the petition will be approved.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.