



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



*DZ*

FILE: WAC 03 161 54254 Office: CALIFORNIA SERVICE CENTER Date: **MAR 29 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 sustained. The petition will be approved.

The petitioner is a residential care facility that seeks to employ the beneficiary as a rehabilitation counselor. 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 beneficiary is not qualified to perform the proffered position. On appeal, counsel submits a brief and previously submitted evidence.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's denial letter; and (3) Form I-290B and additional documents. The AAO reviewed the record in its entirety before issuing its decision.

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.

To meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) states that 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; or
- (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.

The petitioner is seeking the beneficiary's services as a rehabilitation counselor. The petitioner referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and stated that a candidate must possess a baccalaureate degree in college elementary or secondary school counseling, education, rehabilitation counseling, agency or community counseling, clinical mental health counseling, counseling psychology, or a related field.

The director found that the beneficiary is not qualified for the proffered position because the beneficiary's education, experience, and training are not equivalent to a baccalaureate degree in a field that is directly related to the proposed position.

On appeal, counsel refers to the *Handbook*, the *DOT*, the *O\*Net*, the *SOC*, and a letter from Dr. [REDACTED] ARNP, Ph.D., Assistant Professor at Seattle University, School of Nursing, to establish that a baccalaureate degree is the minimum requirement for the proposed position. Counsel also refers to the *Handbook* and a letter from Dr. [REDACTED] Ph.D., CRC, Coordinator of the Rehabilitation Counselor Education Department at California State University of Los Angeles, to establish that California does not require licensure for the proposed position.

Upon review of the record, the petitioner has established that the beneficiary is qualified to perform the proffered position.

The beneficiary holds a diploma from an institution in the Philippine Islands, which the [REDACTED] considers the equivalent to a bachelor's degree in secondary education with a specialization in home economics from an accredited college or university in the United States. The beneficiary also holds certification that confirms completion of nine units in the master of arts in industrial education program, with a major in administration and supervision. FIS considers this the equivalent to a 1/3 year of graduate-level credit from an accredited college or university in the United States. The record also contains educational evaluations from other credentials services that confirm FIS' conclusion about the educational equivalency of the beneficiary's diploma.

The *Handbook*, a resource that the AAO routinely consults, indicates that a bachelor's degree in a relevant field of study is appropriate for a counselor position in California. Fields of study include college student affairs, elementary or secondary school counseling, education, gerontological counseling, marriage and family counseling, substance abuse counseling, rehabilitation counseling, agency or community counseling, clinical mental health counseling, counseling psychology, career counseling, and related fields. Based on the *Handbook's* information, the beneficiary's bachelor's degree in secondary education would be appropriate for a counseling position. Thus, the petitioner has established the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C): the beneficiary's foreign degree is equivalent to a U. S. baccalaureate degree required by the specialty occupation from an accredited college or university.

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.