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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

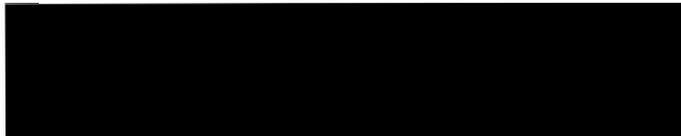
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FILE: WAC 04 165 51976 Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 2006**

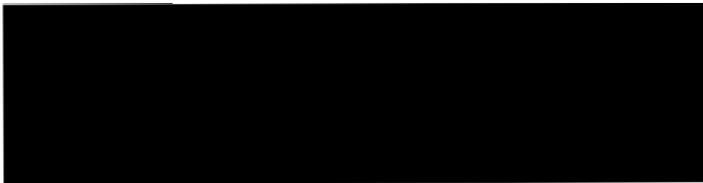
IN RE: Petitioner:



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, Chief
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 sustained. The petition will be approved.

The petitioner is skilled nursing facility that seeks to employ the beneficiary as a business analyst. 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 two grounds: (1) that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation, and (2) that the petitioner had failed to establish that the beneficiary qualifies 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; (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 proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a showing that the nature of the specific duties of the proposed position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner is a skilled nursing facility with 115 employees and a gross annual income of \$5.5 million. While these figures have not been substantiated, they are consistent with other proven facts in the record.

The petitioner’s April 30, 2004 letter of support stated that the duties of the proposed position would include preparing financial estimates; budget analysis; analyzing related markets and compiling detailed reports on pertinent developments; analyzing current and past budgets and allocating funds according to spending priorities, to meet the petitioner’s growing client base and demand for its services; evaluating necessary financial resources required to implement programs and submit recommendations to the President; preparing documents and files in order to perform a cost analysis for inclusion in budget determinations; considering factors such as time sheets, proposals for work; and other documentation to prepare time, cost, and labor estimates for services to individual clients; studying company operations and procedures to determine existing work flow for the processing of new clients and the hiring of additional personnel to meet increasing demands; preparing estimates to be used for planning, organizing, and scheduling work and determining cost effectiveness in keeping with current budget allocations, and the proposals for future budgets; consulting with the company and outside personnel to discuss and formulate marketing estimates and resolving related issues; preparing statistical reports on current costs and preparing reports on existing practices and cost analysis; and establishing methods of improving performance and time spent on specific tasks in order to reduce time and cost inefficiencies.

The petitioner has submitted specific information regarding the details of the proposed position, and these duties appear so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO agrees with the director and with counsel that the duties of the proposed position, which were described in relation to the petitioner’s business, are those of a budget analyst. The position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a showing that the nature of the specific duties of the proposed position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The AAO notes that, according to an evaluation contained in the record, the beneficiary possesses the equivalent of a bachelor’s degree in social sciences, as well as two years of graduate-level study in business administration, so she is qualified to perform the duties of the specialty occupation.

The petitioner has established both that the position qualifies for classification as a specialty occupation and that the beneficiary is qualified to perform the duties of the specialty occupation. As such, the director's decision will be reversed 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.