

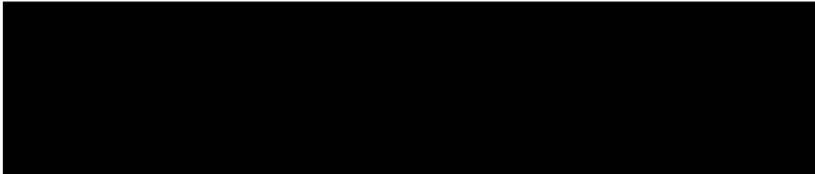
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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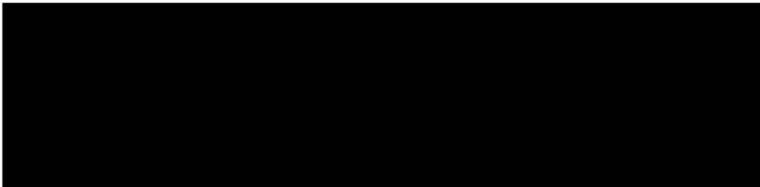
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FILE: WAC 04 102 51566 Office: CALIFORNIA SERVICE CENTER Date: **MAY 25 2006**

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 petitioner is a licensed community-based day care program providing a variety of health, therapeutic, and social services to those at risk of being placed in a nursing home. It seeks to employ the beneficiary as a part-time health center administrator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 part-time health center administrator. Evidence of the beneficiary's duties includes: the I-129 petition; counsel's February 26, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: assisting with the administration and promotion of health programs, the development of policies and programs, and the hiring and training of personnel; coordinating the activities of medical and administrative staff; and promoting the petitioner's facility to the community. The petitioner indicated that a qualified candidate for the job would possess a master's degree in health administration.

The director found that the proffered position, which is primarily that of an administrative services manager position, was not a specialty occupation because the proposed duties are not so complex as to require a bachelor's degree in a specific specialty. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of a medical and health services manager, and is not an administrative services manager. Counsel states further that the proposed duties are so specialized and complex as to require a bachelor's degree or higher, and that the degree requirement is industry wide.

The AAO disagrees with the director's finding that the proffered position is that of an administrative services manager. The AAO concurs with counsel that the duties described for the proffered position fall under the *Handbook's* Medical and Health Services Managers category. Under the category of Medical and Health Services Managers, the *Handbook*, 2006-2007 edition, states:

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.

Further, Title 22 of the California Code of Federal Regulations, Division 3, Subdivision 1, Chapter 5. Adult Day Health Care, Article 5. Administration, Section 54403. Administrator. (a) states that each center shall have an administrator. Section 54403 (b)(6)(A) of this chapter describes the required qualifications of the administrator as: graduation from an accredited college or university, in a field related to the program, and a master's degree plus one year of successful experience in a responsible managerial, administrative, or supervisory position in a social or health service program or agency. The record reflects that the petitioner is a licensed California adult day care center. In this case, the beneficiary holds a foreign bachelor's degree in business administration and a U.S. master's degree in health administration. The evidence of record also reflects that the beneficiary was approved for H-1B status valid from 08/27/01 through 03/01/04, to perform services at Good Hand Medical Center in Santa Clara, California. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations and that the beneficiary is qualified to perform the duties of the 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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.