U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: WAC 05 150 52184 Office: CALIFORNIA SERVICE CENTER Date: SEP 07 2006

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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 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 dismissed. The petition will be denied.

The petitioner is a provider of home health services with 25 employees. It seeks to hire the beneficiary as a quality assurance coordinator. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with the petitioner's statement. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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:

> An 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary's services as a quality assurance coordinator. Evidence of the beneficiary's duties includes: the Form I-129; a letter from the petitioner; and the petitioner's response to the director's request for evidence.

At the time of filing, the petitioner stated that the beneficiary would be responsible for reviewing applications for patient admission; approving admission or referring case file to meet admission standards; comparing in-patient medical records to established criteria and conferring with medical and nursing personnel; [sic] other professional staff to determine legitimacy of treatment and length of stay; assisting review committee in planning and holding federally mandated quality assurance reviews; and supervising and coordinating activities of utilization staff.

The director issued a request for evidence to include a description of the actual day-to-day duties. The director requested evidence that the proffered position meets one of the above listed criteria. The director requested a copy of the facility license; evidence of Title 22 California Code regulations under which the petitioner's facility currently operates as it pertains to personnel requirements; signed copies of the petitioner's filed federal income tax returns.

In response, the petitioner provided a copy of its license to operate and maintain a home health agency and the list of approved services. The petitioner provided a policy statement dated November 12, 2001 which is not identified as being generated by the petitioner. This policy statement included the following duties:

- Reviews daily documentation of assigned staff members, including start of care (SOC) recertification, interim orders, daily clinical notes, progress notes and team conferences;
- Performs chart audit on aspects of care;
- Serves as staff resource and offers in-service programs and counseling, encourages and praises assigned members in documentation;
- Attends client care conferences;
- Prepares and presents in-service programs on documentation, regulations and related topics;
- Performs other activities of data collection; attends quality improvement workshops and other educational activities; keeps abreast of latest information on quality issues;
- Assists in agency's overall quality management;
- Participates in the orientation of new staff members concerning documentation and regulations; reviews clients' records for recertification;
- Holds individual sessions with assigned staff members regarding coordination of services.

In his denial, the director found that the position offered combines the duties of admission nurse, medical records and health information technician, medical and health services manager, nurse supervisor, and data analyst. The director noted that several of these occupations are not normally considered specialty occupations. The director noted that the petitioner did not submit all of the requested evidence and that the petition would be reviewed based on the record available. The director found that the petitioner did not establish that the proffered position satisfied one of the above listed criteria. The director found that many of the listed duties resemble those of a nursing supervisor as described in the Department of Labor's *Occupational Outlook Handbook* (*Handbook*). The director found that the evidence of record does not establish that the proffered position is that of a health services manager. The director found that the proposed duties are a combination of several occupations and resemble those of a head nurse or nurse supervisor. The director noted that the beneficiary holds a baccalaureate degree in nursing and has an application pending with the Board of Registered Nursing for licensure as a registered nurse. The director found that the petitioner had not established that it normally requires a degree for the position or that the nature of the duties are so specialized and complex that they require such a degree. The director determined that the petitioner failed to establish that the proffered position is a specialty occupation.

On appeal, the petitioner asserts that the director denied the petition specifically because the petitioner had not established evidence of a history of hiring professionals. On appeal, the petitioner asserts that the proffered position is so specialized and complex as to require highly specialized knowledge. On appeal, the petitioner submits previously provided information about the position and the petitioner and notes that it is submitting an application for automatic extension of time to file its corporate income tax return.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*1*) and (*2*): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 812 F. Supp. 872, 1095 (S.D.N.Y. 1989)).

In determining whether 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 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.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. As discussed by the director, the duties of the proffered position are most similar to those of a nurse. The *Handbook* indicates that some nurses move into the business side of health care. Their nursing expertise and experience on a healthcare team equip them with the ability to manage ambulatory, acute, home health, and chronic care services. 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. The *Handbook* indicates that nurses are not a specialty occupation.

The *Handbook* reveals the following about the education and training of nurses:

> There are three major educational paths to registered nursing: A bachelor's of science degree in nursing (BSN), an associate degree in nursing (ADN), and a diploma. BSN programs, offered by colleges and universities, take about 4 years to complete. In 2004, 674 nursing programs offered degrees at the bachelor's level. ADN programs, offered by community and junior colleges, take about 2 to 3 years to complete. About 846 RN programs in 2004 granted associate degrees. Diploma programs, administered in hospitals, last about 3 years. Only 69 programs offered diplomas in 2004. Generally, licensed graduates of any of the three types of educational programs qualify for entry-level positions as staff nurses.

Based on the above discussion and the *Handbook's* information about nurses the evidence in the record is insufficient to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

No evidence in the record satisfies the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) which requires the petitioner to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*), as the evidence of record does not establish that the particular position proffered here is so complex or unique that the duties of the position can be performed only by an individual with a degree. As already discussed above, the *Handbook* reveals that many of the beneficiary's duties are performed by nurses, an occupation that does not require a bachelor's degree.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The petitioner submitted a statement asserting that it has a past employment practice of hiring professionals. The petitioner submitted a list of employees indicating that some of its employees have a bachelor's degree in nursing from a foreign university. The petitioner stated that one employee has a bachelor's degree in food technology and another received a certification for assistant accounting. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant case, the petitioner has submitted no evidence regarding its past hiring practices with regard to the proffered position or other similarly-situated employees. Accordingly, it has not established the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*) requires that the petitioner 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 baccalaureate or higher degree. The petitioner asserts that the proffered position is so specialized and complex as to require highly specialized knowledge. The petitioner indicates that it has 25 employees and provides home health care services to patients in their homes. The petitioner has

not provided evidence of the complexity of the duties. The petitioner has stated that the beneficiary will assist in holding quality assurance reviews. The petitioner has not described the beneficiary's duties in relation to the QA/QI position that it indicated on the organizational chart. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As noted in the *Handbook*, the position of a nurse is not a specialty occupation. The petitioner has not distinguished its position from a nurse as described in the *Handbook*, and has not established that the duties of the position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty; or that the position's duties are so specialized and complex that knowledge required to perform them is usually associated with attainment of a baccalaureate or higher degree in a specific specialty. The petitioner therefore fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.

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