

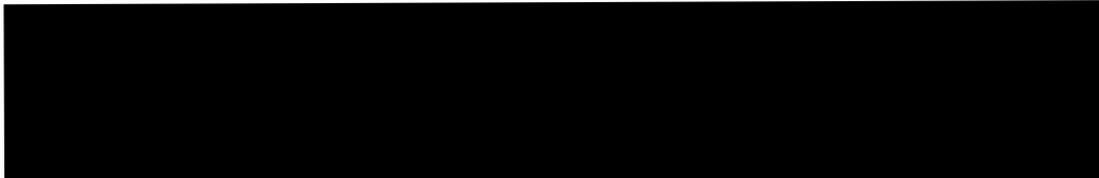
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**U.S. Citizenship  
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FILE: WAC 04 144 50631 Office: CALIFORNIA SERVICE CENTER Date: SEP 12 2006

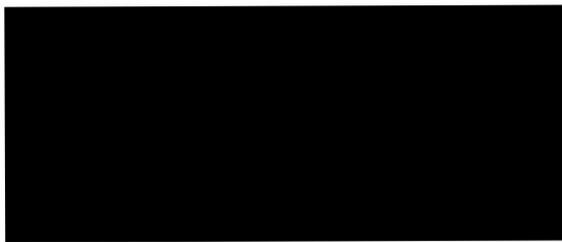
IN RE: Petitioner:

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.

*for Michael T. Kelly*  
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 sustained. The petition will be approved.

The petitioner is a health care and rehabilitation services provider that seeks to employ the beneficiary as a coordinator, rehabilitation services. 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 proffered position is not a specialty occupation. Counsel submits a timely appeal.

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) 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, the brief, 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 coordinator, rehabilitation services. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail planning, administering, and directing the operation of health therapy rehabilitation programs; carrying out established rehabilitative therapy programs and services; consulting and conferring with medical and professional staff to plan training programs by coordinating activities and attending in-service educational programs to maintain proficiency of staff in therapy techniques and the use of new methods and equipment to meet patients' needs; participate in resident care management by expanding medical programs and health services to promote rehabilitation; assigning/allocating staff on various rehabilitative programs by establishing work schedules and assignments for staff according to workload and space availability as well as to monitor the use of facilities to ensure use of resources and assess the need for additional rehabilitation staff. The petitioner requires a bachelor's degree in physical therapy, or its equivalent, and one year of related experience. The petitioner stated that licensure is not required for the position.

The director stated that the proposed position is not a specialty occupation because it does not require a master's degree, which he stated that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) reveals is the standard credential for a medical and health services manager. The director found that the beneficiary does not hold a master's degree in the specialty occupation. The director stated that the submitted organizational chart did not provide detailed information as requested, and that the petitioner did not submit requested payroll documentation.

On appeal, counsel states that the director is inconsistent in his statements about whether the proposed position qualifies as a specialty occupation. Counsel maintains that the *Handbook* reports that for physicians' offices and some other facilities, a baccalaureate degree or prior work experience is adequate to work as a health services manager; for clinical department heads, a degree in an appropriate field and work experience may be sufficient for entry; and for smaller facilities a bachelor's degree may be appropriate. According to counsel, because the petitioner is a small facility a baccalaureate degree is appropriate for the offered position. Counsel states that *Matter of Reyes*, 13 I&N Dec. 406 (1969), indicates that the *Handbook's* information is to be used with discretion when determining the employment requirements for occupations. According to counsel, the beneficiary's degree in physical therapy, prior work experience, and his passage of the Board of California's National Physical Therapy and California Law Examinations qualify him for the offered position.

Upon review of the record, the petitioner has established that the offered position qualifies as a specialty occupation.

The criterion 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 such duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Based on the

evidence of record, the AAO finds that the petitioner established this criterion. The petitioner, an adult day health care center, provides health care and rehabilitation services for up to 74 participants. The petitioner offers services in medical and skilled nursing, personal care, and rehabilitation including physical therapy, occupational therapy, and speech therapy. It also offers services in nutrition, psychiatry/psychology, social work, recreational and social activities, and provides transportation. All services are provided to fragile elderly and disabled adults who are at risk of being placed in a nursing facility. The record contains the petitioner's license to operate the facility, its organizational chart, brochure, photographs, and financial documents. The duties described by the petitioner are similar to those of a department head requiring a baccalaureate degree in the field and work experience. In the context of the evidence of record, the AAO finds that the nature of the proposed duties is so specialized and complex that the knowledge required to perform such duties would require the attainment of a baccalaureate degree in an appropriate field such as physical therapy.

The AAO will now consider the beneficiary's qualifications for the proposed position.

The record contains the beneficiary's transcript and baccalaureate degree in physical therapy conferred by the University of the East in the Philippine Islands. The educational evaluation from The Trustforte Corporation, also contained in the record, indicates that the degree is the equivalent of a bachelor of science degree in physical therapy from an accredited college or university in the United States. The certification from the beneficiary's prior employer states that the beneficiary was employed as physical therapy staff from November 1997 to December 1999, and as a rehabilitative services coordinator from December 1999 to May 2003. Based on the evidence of record, the beneficiary is qualified to perform the duties of the offered position. The AAO notes that, as described by the petitioner, the beneficiary will not perform services as a physical therapist, as that occupation, which is depicted in the *Handbook*, requires licensure.

As related in the discussion above, the petitioner has established that the proffered position is a 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.

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