



U.S. Citizenship
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Services

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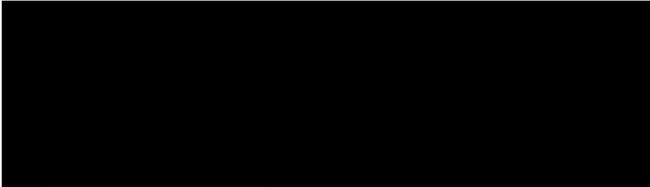
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FILE: LIN 04 087 51410 Office: NEBRASKA SERVICE CENTER Date: **SEP 26 2006**

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 nonimmigrant visa petition was approved by the Nebraska Service Center on March 19, 2004. On November 23, 2004, the United States Department of State refused the beneficiary's dependents' derivative H-4 visas because the beneficiary was not employed in the position for which the H-1B was approved. The Department of State issued a statement recommending that the beneficiary's petition be revoked. On April 28, 2005, a Notice of Intent to Deny (NOID) was served on the petitioner by mailing a copy of same to the petitioner's attorney. The NOID set forth the grounds for revocation of the approved Form I-129 petition, and informed the petitioner that it had 30 days in which to respond to the NOID. On May 5, 2005 the petitioner responded to the director's NOID. On June 10, 2005 the director revoked the approval of the Form I-129 petition. 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 rehabilitation facility. It seeks to employ the beneficiary as a quality assurance coordinator, and endeavors to classify her 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's determination revoking the Form I-129 petition was made after receiving a memorandum from the U.S. Consulate in Manila, Philippines questioning the beneficiary's employment position. The consular officer interviewed the beneficiary's dependents. During the interview, the dependents stated that the beneficiary was working as a registered nurse. Further, the dependant admitted that he was not married to the beneficiary. The officer noted that the letter submitted in support of the dependents' H-4 visas stated that the beneficiary is "employed as a Registered Nurse performing Quality Assurance with our Company." After reviewing the record, the director found that the proffered position did not qualify as a specialty occupation and revoked approval of the petition.

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), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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 field 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 are 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 regulation at 8 C.F.R. § 214.2(h)(11)(iii), which governs revocations that must be preceded by notice, states:

(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
- (2) The statement of facts contained in the petition was not true and correct; or
- (3) The petitioner violated terms and conditions of the approved petition; or
- (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
- (5) The approval of the petition violated paragraph (h) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

The director complied with the notice requirements of 8 C.F.R. § 214.2(h)(11)(iii)(B), and his decision to revoke approval of the petition demonstrates that the director considered all relevant evidence as required by this regulatory provision.

Counsel submitted a timely Form I-290B on June 24, 2005 and indicated that a brief and/or additional evidence would be submitted within 30 days. As of this date, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

Pursuant to 8 C.F.R. § 214.2(h)(11)(B)(iii)(5), the director may revoke an H-1B petition if approval of the petition violated paragraph (h) of 8 C.F.R. § 214.2, or involved gross error. In this instance, approval of the petition was in violation of paragraph (h) of the cited regulation in that the proffered position does not qualify as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner seeks to employ the beneficiary as a quality assurance coordinator. In this capacity the beneficiary would: interpret and implement quality assurance standards in the health care facility to ensure quality care to patients by determining that health care services are provided to subscribers/patients consistent with standards of quality care generally accepted in the medical community and generally accepted by governmental and professional review entities. Additional duties include:

- Assesses needs of the department and personnel, plans, evaluate services to meet stated goals in the health care facility; review quality assurance standards; analyze and study existing rehabilitation center policies and procedures; interview personnel and patients to evaluate the effectiveness of quality assurance program; monitors the cost effectiveness of services and recommends corrective measures; monitor key activities and outcomes and obtains solutions to problems and improves services and operations in cost effective manner; develops chart audit program to monitor compliance with all federal, state and local JCAHO and corporate guidelines as well as assure the delivery of high standards of care;
- Reviews and evaluates patients' medical records applying utilization review criteria to determine need for admission to the services and continued stay in the rehabilitation services;
- Compiles statistical data and writes narrative reports summarizing findings; and
- Selects specific topics for review such as problem procedures, drugs, high volume cases, high risk cases or other factors; and writes quality assurance policies and procedures.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The director noted that the petitioner responded to the NOID and stated, "[t]he phrase, 'Registered Nurse performing Quality Assurance' means that [the beneficiary] is licensed as a registered nurse and that [the beneficiary]'s job title is Quality Assurance Coordinator." The director referred to the *Handbook* which indicates that performance reviews and quality assurance falls within the normal range of duties of a registered nurse. The director noted that a registered nurse does not normally meet the requirements of

sections 101(a)(15)(H) of the Act and 8 C.F.R. § 214.2(h) to qualify as a specialty occupation. The director noted that the petitioner maintains that the beneficiary was and continues to be a quality assurance coordinator. The director found that the petitioner did not provide any documentary evidence and had not met the burden of proof that the position was a specialty occupation.

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 submitted several advertisements for positions of various titles: quality manager, quality engineer, and quality assurance engineer. The petitioner has not established that the advertising companies are similar organizations. For example, the petitioner submitted ten job postings for positions with Johnson & Johnson, which is a multinational corporation with various divisions and manufactures products and offers services. The petitioner has not established that the duties of the proffered position are parallel to the duties of the advertised positions. Therefore, none of the listed postings can be considered a parallel position to the proffered position.

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 states that it has been its

established practice to require a minimum of a baccalaureate level degree for all of its quality assurance coordinators. 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. On appeal, counsel asserts that the beneficiary is employed as a quality assurance coordinator. As discussed above, and as corroborated by the H-4 support letter presented to the Department of State, the beneficiary is working as a nurse in the position of quality assurance. 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 stated above, pursuant to 8 C.F.R. § 214.2(h)(11)(B)(iii)(5), the director may revoke an H-1B petition if approval of the petition violated paragraph (h) of 8 C.F.R. § 214.2, or involved gross error. In this instance, approval of the petition was in violation of paragraph (h) of the cited regulation in that the proffered position is not a specialty occupation. The director appropriately revoked the Form I-129 petition.

The record establishes that the proffered position is not a specialty occupation. The director's decision shall, therefore, not be disturbed.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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