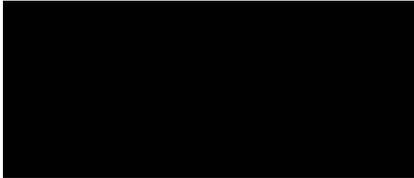




U.S. Citizenship
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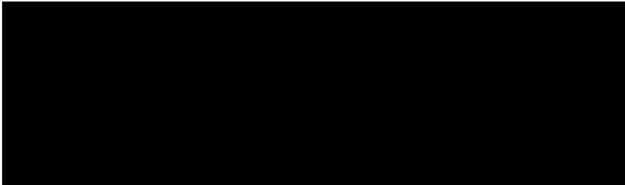
FILE: WAC 04 208 54042 Office: CALIFORNIA SERVICE CENTER Date:

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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner operates residential care facilities for developmentally disabled adults, and seeks to employ the beneficiary as a qualified mental retardation professional (QMRP). The petitioner 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 finding that the record did not establish that the petitioner would employ the beneficiary on a full time basis in a specialty occupation as a QMRP. On appeal, counsel submits a brief and additional information stating that the proffered position qualifies as a specialty occupation and that the director's decision should accordingly be withdrawn and the petition approved.

The AAO shall first consider the director's finding that the petitioner's business does not warrant a full-time qualified QMRP as its patient base is not extensive or complex enough to require the services of a full-time QMRP. The petitioner is an employer as defined by applicable regulation.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), *United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number.

The petitioner submitted appropriate documentation to establish that it operates a going business, has employees over which it has the authority to hire, pay, fire, supervise, or otherwise control their work, and has an Internal Revenue Service Tax identification number. It is, therefore, a United States employer. The petitioner has made an offer of employment to the beneficiary whereby the beneficiary would perform services for it (contingent upon approval of the Form I-129 petition) as a QMRP. The petitioner operates the kind of business that normally employs QMRPs, and the employment of those individuals in the petitioner's business environment is regulated by state and federal law. The beneficiary has, therefore, established that it has employment available for the beneficiary, and that the beneficiary would be coming to the United States to perform services as a QMRP. The director's decision to the contrary is withdrawn.

The next issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of 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 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 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 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 with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a QMRP. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Coordinate with the administrator in processing admission and discharge of clients;
- Coordinate and monitor the implementation of individual service plans (ISP) to fit each resident's needs;
- Maintain client files;
- Serve as liaison with other agencies;
- Lead an interdisciplinary ISP team in assessing each resident's mental, physical and health rehabilitation requirements based on the treatment authorization requests (TAR) approved by the State, and formulate an ISP and training plan for each client based on such assessments;
- Meet with the registered nurse (RN) and direct care staff weekly to ensure that the staff properly implements ISPs that accommodate the needs of each client;
- Meet weekly with the administrator, RN and licensee to go over facility business;
- Ensure all client and facility records are maintained; and
- Work with the administrator to write and/or update facility program plans.

The California Code of Regulations (Title 22, Section 76830) defines a QMRP as follows:

Qualified Mental Retardation Professional (Q.M.R.P.).

(a) Qualified mental retardation professional means a person who has specialized training or one (1) year of experience in treating or working with the developmentally disabled and is one of the following:

(1) A person with a master's degree in psychology.

(2) A physician.

(3) An educator with a degree in education.

(4) A social worker with a bachelor's degree in:

(A) Social work from an accredited program; or

(B) A field other than social work and at least three (3) years of social work experience under the supervision of a social worker with a master's degree.

(5) A physical therapist.

(6) An occupational therapist.

- (7) A speech pathologist.
- (8) An audiologist.
- (9) A registered nurse.
- (10) A recreation therapist.
- (11) A rehabilitation counselor.

It cannot be determined from the above listed qualifications, that a baccalaureate degree or higher, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the proffered position. Many of the qualifications listed do require a baccalaureate degree or its equivalent. There appears to be no requirement however, that a registered nurse hold a bachelor's degree for entry into the position. The only requirement is that the person be a registered nurse with specialized training or one year of experience working with the developmentally disabled. An individual may become a registered nurse with less than a bachelor's degree. The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has, however, established that 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. The duties of the proffered position require an individual with specialized knowledge of developmental disabilities to provide patient/client services in a licensed rehabilitative facility. The beneficiary must develop, coordinate and implement all program services for the petitioner's clients. This necessarily entails client health assessments, creation of client's individual service plans, training of staff regarding the treatment of clients and implementation of individual service plans, knowledge of applicable state and federal regulations, and supervision of other members of senior management. These duties are sufficiently specialized and complex to require a baccalaureate or higher degree, or its equivalent, for entry into the proffered position. The offered position is, therefore, a specialty occupation as it satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petition may not be granted at this time, however, because the record does not establish that the beneficiary is qualified to perform the duties of the position. The petitioner holds the equivalent of a master's degree in education from an accredited college or university in the United States, a degree found acceptable for the position in the above regulation. It must also be noted, however, that the California Department of Developmental Services (DDS) website¹ states that the DDS must review and approve all QMRP's before they are permitted to work at a licensed facility. There is no evidence of record to establish that the beneficiary was approved to work as a QMRP at the petitioner's facility prior to the filing of the Form I-129 petition. The petition must accordingly be remanded to the director to determine whether the beneficiary is qualified to perform the duties of the proffered position. The director may request such additional evidence as he deems necessary in rendering his decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

¹ http://www.dds.ca.gov/ICF/ICF_QMRP_Requirements.cfm

ORDER: The director's decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion which, if adverse to the petitioner, shall be certified to the AAO for further review.