

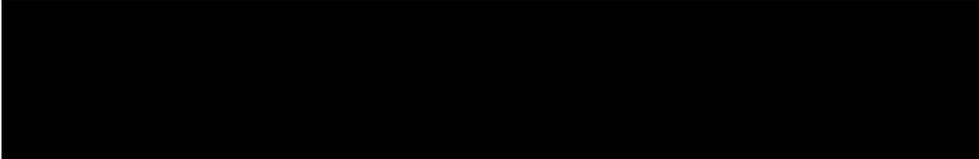
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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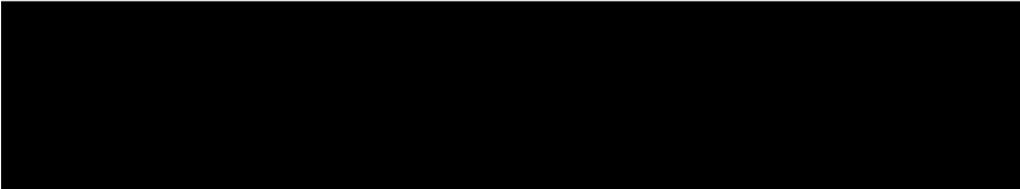
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FILE: EAC 04 259 51562 Office: VERMONT SERVICE CENTER Date: JAN 08 2007

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.

for *Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The 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 petition will be approved.

The petitioner is a home health services company that seeks to employ the beneficiary as a rehabilitation case manager. 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 on the basis of her determination that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation.

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 for evidence; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Although not addressed by the director in her denial, the AAO will first address the issue of whether the proposed position qualifies for classification as 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 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 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 proposed position.

The petitioner’s August 30, 2004 letter of support stated that duties of the proposed position would consist of planning, assisting, organizing, and directing the petitioner’s rehabilitation case management data and collection; managing a group of rehabilitating patients under several Medicaid waiver programs, including waivers for elderly and disabled patients, mental retardation waivers, developmental disability waivers, and AIDS and HIV waivers; coordinating rehabilitation care plans with the county Medicaid social worker, physician, the patient, and the patient’s family; assessing, planning, coordinating, monitoring, and evaluating the services required to respond to an individual’s rehabilitation needs; determining the eligibility of identified high-risk/high-cost patients, and reviewing and analyzing referral information in consultation with the individual, family, and health team members; preparing all documents needed for approval of services to be submitted to the Department of Medical Services; monitoring the use of available health care services, including, but not limited to, referral patterns, use of rehabilitation and specialty services, and claims review, in an objective and systematic manner that promotes appropriate and quality care, as well as the effective and efficient use of available resources; establishing and maintaining tracking systems for the recommendation of groups involved in rehabilitation care management; performing administrative requirements such as completing necessary forms, reports, etc., and submitting them to physicians as required; assuming responsibility for meeting insurance treatment objectives through the coordination of managed care admission; implementing effective recording and reporting mechanisms; and performing other pertinent duties.

In determining whether a proposed 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. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

While the petitioner titles its proposed position “rehabilitation case manager,” the duties of the position are similar to those of a health services manager as that position is described in the *Handbook*. As discussed in the 2006-2007 edition of the *Handbook*:

Medical and health services managers . . . plan, direct, coordinate, and supervise the delivery of health care. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help manage an entire facility or system.

Clinical managers have training or experience in a specific clinical area and, accordingly, have more specific responsibilities than do generalists. For example, directors of physical therapy are experienced physical therapists, and most health information and medical record administrators have a bachelor's degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

In that the proposed position appears closely aligned to that of a medical and health services manager, the AAO next turns to the *Handbook's* discussion of whether the occupation normally requires a baccalaureate or higher degree, or its equivalent, for entry into the profession. The *Handbook* reports the following educational requirements for those seeking employment as medical and health services managers:

Medical and health services managers must be familiar with management principles and practices. 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. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities. . . .

For persons seeking to become heads of clinical departments, a degree in the appropriate field and work experience may be sufficient early in their career. However, a master's degree in health services administration or a related field might be required to advance. For example, nursing service administrators usually are chosen from among supervisory registered nurses with administrative abilities and a graduate degree in nursing or health services administration.

The petitioner is a home health services company with 48 employees. Its staff is comprised of registered nurses, physical therapists, occupational therapists, speech therapists, medical and social workers, and nursing aides. As the beneficiary would oversee the company's rehabilitation services, the AAO finds that the educational requirements for the position would be similar to those of a clinical department head. According to the *Handbook*, a degree in the appropriate field and work experience are sufficient for entry for clinical department heads.

As such, the proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The record reflects that the beneficiary earned a bachelor's degree in physical therapy from Far Eastern University, in the Philippines, in 2002. According to an evaluation contained in the record, this degree is equivalent to a bachelor's degree in physical therapy from an accredited college or university in the United States. Therefore, she is qualified to perform the duties of this specialty occupation.

The AAO agrees with counsel that the proposed position does not require licensure, as the position does not involve the practice of physical therapy and she would not be providing any counseling services.<sup>1</sup>

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<sup>1</sup> See Virginia Department of Health Professions, Regulated Professions, <http://www.dhp.state.va.us/>

The petitioner has established that the proposed position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the appeal will be sustained, and the petition will be approved.

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.