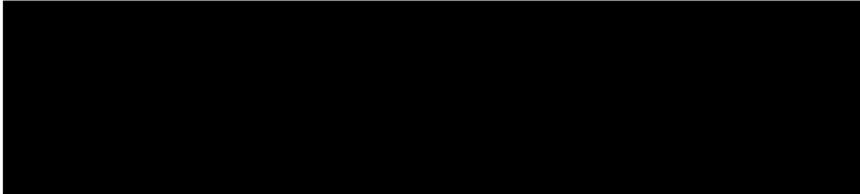


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U.S. Citizenship  
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*DN*

FILE: SRC 06 032 51629 Office: TEXAS SERVICE CENTER Date:

**MAR 03 2008**

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:

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*

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 The director's decision is withdrawn and the petition remanded for entry of a new decision.

The petitioner is a skilled nursing facility that seeks to employ the beneficiary as a nursing unit 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 concluding that the petitioner had failed to establish that the beneficiary qualifies for the proposed specialty occupation position. The director noted that the training requirements for a medical or health care manager requires an individual with a master's degree, and since the beneficiary had only obtained a bachelor's degree, she did not qualify for the proffered position.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's denial letter; (3) the director's request for additional evidence; (4) the petitioner's response to the director's request; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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:

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 qualification for classification as a specialty occupation, the proposed 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 is a skilled nursing facility with 124 employees and a gross annual income of \$4 million. The petitioner submitted a job description for the proposed position stating that the beneficiary will be “responsible for the clinical and operational management of the unit, ensuring that standards of practice for nursing and patient care are maintained.” The proposed position would work under the Director of Nursing and would supervise Staff RN’s, LPNS, and Nurse Aides. The job description described the proposed duties as follows:

1. Works with Director of Nursing [DON] to develop and implement goals of assigned units and to evaluate progress toward attainment of goals.
2. Using available utilization data, works with other Unit Nurse Managers and DON to develop staffing plan and schedules for units to maintain appropriate staffing levels and staffing mix; communicates staffing plan to Nurse Supervisor; ensures adequate staff coverage by reviewing vacation and holiday schedules; approves overtime as necessary and authorizes coverage for absent staff.
3. Selects, hires and supervises staff in area of responsibility; initiates disciplinary action, including terminations; carries out annual performance appraisal of employees recommending promotions, raises, etc. Complies with contractual agreements and federal guidelines in employee relationships.
4. Ensures safe and professional patient care by enforcing and monitoring compliance with professional standards, identifying clinical and educational needs of staff; recommends methods for improving staff competence and patient care and assists in developing, implementing and evaluating programs.
5. Through meetings, in-services or other established means of communications provides information to departmental staff for therapeutic and effective patient care management; identifies and puts into place appropriate monitors of patient care delivery.
6. Periodically reviews admission and patient management protocols, discharge criteria and related policies and procedures for compliance with requirements of regulatory agencies; recommends and implements changes as required, making sure information

is available to staff in area of responsibility; monitors compliance and reviews with DON and ADON.

7. Oversees the quality assurance/quality improvement programs in area of responsibility, identifying patient care issues, developing QA monitors and ensuring that follow-up actions are implemented.
8. Provides information required for reports on utilization, monitors, credentialing and scheduling as necessary to be compliant with regulatory agency reporting and monitor requirements; prepares reports on service and utilization as required.
9. Assists DON in developing annual budgets; monitors budget performance throughout the year to ensure units operate within budget guidelines; works with administration to ensure most efficient and cost-effective allocation and use of resources.
10. Maintains established departmental policies and procedures, objectives, quality assurance program, safety, environmental, and infection control standards.

In the director's September 28, 2006 decision, she noted that the proposed position consists of the same duties performed by medical and health services managers as described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director noted that the training and education required for this occupation is a "master's degree in health services, administration, long-term care administration, health sciences, public health, public administration, or business administration . . . for most generalist positions . . . in this field." Thus, the director concluded that since the beneficiary did not obtain a master's degree in the field of study mentioned in the *Handbook*, she is therefore not qualified to fill the proposed position.

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 *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* provides the following information regarding the educational background necessary for entry as a medical and health service manager:

**Education and training.** 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, at the departmental level within health care organizations, and in health information management. Physicians' offices and some other facilities hire those with on-the-job experience instead of formal education.

*Licensure.* All States and the District of Columbia require nursing care facility administrators to have a bachelor's degree, pass a licensing examination, complete a State-approved training program, and pursue continuing education. Some States also require licenses for administrators in assisted living facilities. A license is not required in other areas of medical and health services management.

The petitioner requires its employees who fill the position of nursing unit manager to have obtained a bachelor's degree in nursing and graduate from an approved RN program, as evidenced by its job description for the proffered position. The record reflects that that the beneficiary earned the equivalent of a U.S. Bachelor of Science Nursing degree. In addition, the beneficiary has obtained the registered nurse license from the North Carolina Board of Nursing, and has 12 years of professional experience in nursing. Thus, the beneficiary is qualified to perform the services of a nursing unit manager. The petition may not be approved, however, as the petitioner has not established that the position is a specialty occupation.

As noted above, 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 (5<sup>th</sup> 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.

Upon review of the job description, the AAO notes that the record does not establish that the beneficiary will be a nursing home administrator and thus the duties are not similar to the duties of a medical and health service manager as discussed in the *Handbook*. The petitioner indicated that the proposed position will report to the Director of Nursing and will supervise other nurses in the unit. The record describes a supervisory nursing position in a skilled nursing facility. In addition, the petitioner submitted with the job description a document entitled "standards of professional practice for rehabilitation nursing" which outlines the responsibilities and standards required for the nursing position offered to the beneficiary. Thus, the AAO finds that the duties and responsibilities of the proposed position, while generally described, are encompassed within the *Handbook's* entry for registered nurses. As described:

Registered nurses (RNs), regardless of specialty or work setting, perform basic duties that include treating patients, educating patients and the public about various medical conditions, and providing advice and emotional support to patients' family members. RNs record patients' medical histories and symptoms, help to perform diagnostic tests and analyze results, operate medical machinery, administer treatment and medications, and help with patient follow-up and rehabilitation.

[N]urse administrators supervise nursing staff, establish work schedules and budgets, and maintain medical supply inventories . . . .

As to whether the minimum academic entry requirement into the occupation of registered nurse is a baccalaureate or higher degree, or its equivalent, the *Handbook* states:

In all States and the District of Columbia, students must graduate from an approved nursing program and pass a national licensing examination, known as the NCLEX-RN, in order to obtain a nursing license . . . . All States require periodic renewal of licenses, which may involve continuing education.

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 . . . . ADN programs, offered by community and junior colleges, take about 2 to 3 years to complete . . . . Diploma programs, administered in hospitals, last about 3 years . . . . Generally, licensed graduates of any of the three types of educational programs qualify for entry-level positions as staff nurses.

In that the *Handbook* indicates that individuals with associate degrees in nursing, as well as nursing diplomas, may obtain entry-level employment as registered nurses, the AAO finds that the petitioner's proffered position does not qualify as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The record does not establish the position as a specialty occupation under any of the remaining three criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Based on the foregoing analysis, the AAO has determined that the record, as presently constituted, fails to establish that the beneficiary would be performing services in a specialty occupation, as defined in 8 C.F.R. § 214.2(h)(4)(iii)(A). The director did not address this issue in his denial. Therefore, the director's decision will be withdrawn and the matter remanded for the entry of a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the proposed position qualifies for classification as a specialty occupation. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's September 28, 2006 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.