

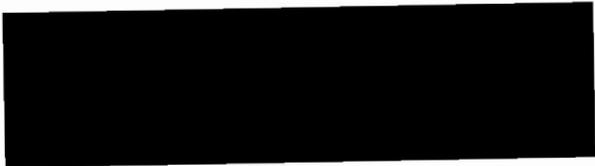


U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

D2



FILE: WAC 07 146 54067 Office: CALIFORNIA SERVICE CENTER Date: NOV 25 2008

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.

  
John F. Grissom, Acting 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 The director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner is a skilled nursing facility that seeks to employ the beneficiary as a Director of Activities. 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, determining that the petitioner had not established that the proffered position is 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 evidence (RFE); (3) counsel's response to the RFE; (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 reaching 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

*Specialty occupation* means an 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner seeks the beneficiary's services as a Director of Activities. Evidence of the beneficiary's duties includes: the petitioner's March 20, 2007 letter in support of the petition and counsel's August 13, 2007 response to the director's RFE. As stated by the petitioner, the proposed duties are as follows:

- Plan, organize, develop, and direct the overall operation of the Activity Department in accordance with current federal, state, and local standards, guidelines and regulations, and company policies and procedures;
- Assure that an on-going program of activities is designed to meet, in accordance with the comprehensive assessment, the interests and physical, mental, and psychological well-being of each resident;
- Assess the needs and interests of each participant and develop an individualized activity plan as part of the individual plan of care developed by the Multidisciplinary Team;
- Record, date and sign quarterly progress notes in each participant's record;
- Plan, schedule and post a monthly schedule of planned activities;
- Involve the participants in the planning of regular and special programs;
- Encourage participants to take part in activities suited to their individual needs, interests and functional capabilities;
- Receive regular consultation from the Occupational Therapist and Social Worker;
- Supervise Program Aides who perform assigned tasks in the delivery of individual or group activities specified in the activity plan;
- Assign Program Aides to established activities for which Program Aides have special talents, such as Arts and Crafts, Music and Dancing, Flower Arrangements, Foreign Language and Travel Programs; and

- Order and maintain activity equipment and supplies.

In response to the director's RFE, counsel further described the proposed duties and time allocations as follows:

- Plan, organize, develop, and direct the overall operation of the Activity Department in accordance with current federal, state, and local standards, guidelines and regulations, and company policies and procedures. Plan, schedule and post a monthly schedule of planned activities (30%);
- Assure that an on-going program of activities is designed to meet, in accordance with the comprehensive assessment, the interests and physical, mental, and psychological well-being of each resident. Assess the needs and interests of each participant and develop an individualized activity plan as part of the individual plan of care developed by the Multidisciplinary Team. Record, date and sign quarterly progress notes in each participant's record (30%);
- Involve the participants in the planning of regular and special programs. Encourage participants to take part in activities suited to their individual needs, interests and functional capabilities (5%);
- Receive regular consultation from the Occupational Therapist and Social worker (10%);
- Supervise Program Aides who perform assigned tasks in the delivery of individual or group activities specified in the activity plan. Assign Program Aides to established activities for which Program Aides have special talents, such as Arts and Crafts, Music and Dancing, Flower Arrangements, Foreign Language and Travel Programs (20%); and
- Order and maintain activity equipment and supplies (5%).

The director found that the proposed Director of Activities duties do not require a bachelor's degree. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, under the category of Recreational Therapists, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered Director of Activities position is similar to the position of Recreational Therapist. According to counsel, the petitioner has satisfied all of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel also states that, according to the *Handbook*, a bachelor's degree generally is the minimum educational requirement, and that the DOL has classified the position as a Job Zone 4, which is equivalent to the SVP Range of 7 and above (referring to the DOL's *O\*Net* and the *Dictionary of Occupational Titles (DOT)*).

Pursuant to the Business and Professions Code of California § 17505.2:

- (a) It is unlawful for a person to represent himself or herself as a recreation therapist, to represent the services he or she performs as recreation therapy, or to use terms set forth in subdivision (c) in connection with his or her services, name, or place of business, unless he or she meets all of the following requirements:
  - (1) Graduation from an accredited college or university with a minimum of a baccalaureate degree in recreation therapy or in recreation and leisure studies with a specialization in recreation therapy. Alternatively, a person who does not have one of the preceding degrees may qualify if he or she has a baccalaureate degree in a specialization acceptable for certification or eligible for certification by any accrediting body specified in paragraph (2).
  - (2) Current certification or eligibility for certification as a recreation therapist by the California Board of Recreation and Park Certification or by the National Council for Therapeutic Recreation Certification, Inc.
- (b) No person shall represent himself or herself as a recreation therapist assistant, or represent the services he or she performs as being in any way related to recreation therapy, unless he or she at a minimum has current certification, or has eligibility for certification, by the California Board of Recreation and Park Certification or by the National Council for Therapeutic Recreation Certification, Inc., as a recreation therapist assistant.

In its *Handbook*, 2008-09 edition, the DOL finds that most entry-level recreational therapists need a bachelor's degree in therapeutic recreation, or in recreation with a concentration in therapeutic recreation. In this matter, the petitioner and counsel maintain that the beneficiary will plan, organize, develop, and direct the overall operation of the petitioner's Activity Department in accordance with current federal, state, and local standards, guidelines and regulations, and company policies and procedures. The AAO agrees that the record establishes that the proffered Director of Activities position is a recreational therapist, and is a specialty occupation. The petitioner has established that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Accordingly, the petitioner has overcome the grounds upon which the director denied the petition.

The petition may not be approved, however, because the director has not determined whether the beneficiary is qualified to perform the services of a specialty occupation. In this matter, the beneficiary holds a foreign bachelor's degree in elementary education. The record contains a credentials evaluation prepared by Global Education Group, Inc. indicating that the beneficiary's foreign education is equivalent to a Bachelor of Arts degree in Elementary Education awarded by a regionally accredited college in the United States. However, the record does not contain evidence that the beneficiary's degree qualifies her for the specialty occupation or that she is certified as a recreation therapist by the State of California. Therefore, the record is insufficient to establish that the beneficiary is qualified for the proffered position.

Upon review of the record, there is insufficient evidence in the record to determine that the beneficiary is qualified to perform the duties of a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). As the director did not rule on this issue, the petition will be remanded in order for the director to address the beneficiary's qualifications to perform the services.

The director's decision will be withdrawn and the matter remanded for entry of a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of the 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 remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's September 29, 2007 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.