U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

D2

[redacted]

APR 26 2004

FILE: WAC 01 259 59284 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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.

for Mari Johnson
Robert P. Wiemann, Director
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 appeal will be dismissed. The petition will be denied.

The petitioner is a convalescent center that seeks to employ the beneficiary as a quality assurance coordinator. 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 because the proffered position is not a specialty occupation, and the beneficiary is not qualified to perform a specialty occupation. On appeal, the petitioner submits a statement and copies of previously submitted documentation. On the Form I-290B, the petitioner indicated that it would submit a separate brief and/or additional evidence within thirty days; to this date, however, no additional documentation has been received. Thus, the record is complete.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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)(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 proffered position.

The record of proceeding before the AAO contains: (1) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a quality assurance coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 20, 2001 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: assuring the quality of services by interviewing patients and medical personnel, establishing personnel training programs, and reviewing staff notes; compiling statistical data and writing narrative reports; and working with nursing supervisors in formulating patients' treatment plans. The petitioner requires candidates for the job to possess a bachelor's degree in human services, social work, business administration, public administration, or nursing.

The director found that the proffered position was not a specialty occupation. The director likened the instant position to that of a nursing supervisor, a position whose minimum entry requirement is not a baccalaureate degree or its equivalent in a specific specialty. On appeal, the petitioner states that the proffered position is not that of a nursing supervisor, and that the beneficiary would work on behalf of the patients in conjunction with the nursing supervisors to assure the quality of the care delivered.

The AAO notes that the petitioner does not require a degree in a specific specialty for performance of the proposed job duties. On appeal, the petitioner states that an individual with a bachelor's degree in a number of diverse fields, including business administration, public administration, and nursing would be suitable for the proffered position. This indicates that the proffered position is not a specialty occupation. The only duty related to nursing, the beneficiary's area of expertise, involves working with supervisors to formulate patients' treatment plans. Contrary to the petitioner's assertions, this duty pertains more to a nursing supervisor position than to that of an independent quality assurance position. Even so, according to the authoritative guidance provided by the Department of Labor's *Occupational Outlook Handbook* (*Handbook*), a baccalaureate degree is not required for performance of the duties of a registered nurse or a supervisor.

The evidence on the record does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*), and the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary's qualifications.

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 not sustained that burden.

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