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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 099 55083 Office: CALIFORNIA SERVICE CENTER Date: FEB 06 2004

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:

[redacted]

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, Director
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 The director's decision will be withdrawn and the matter remanded to the director for entry of a new decision.

The petitioner is a health care facility for the developmentally and physically disabled that seeks to employ the beneficiary as a rehabilitation services coordinator. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief, and new and previously submitted evidence.

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 entirely before issuing its decision.

The petitioner is seeking the beneficiary's services as a rehabilitation services coordinator. Evidence of the beneficiary's duties includes: the Form I-129; the letter accompanying the Form I-129; the document entitled

"Detailed Description of the Position's Tasks and Duties"; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: planning, administering, and directing health rehabilitation programs; treating and rehabilitating persons with physical and/or mental disabilities or disorders by using therapy, education, and access to equipment; consulting with medical and professional staff to treat patients and plan and coordinate objectives; conducting training; and performing administrative duties. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in any health care field and two years of experience.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director discussed the duties of a coordinator of rehabilitation services as delineated in the Department of Labor's (DOL) *Dictionary of Occupational Titles* (DOT); and the duties, qualifications, and training of a nurse as portrayed in the DOL's *Occupational Outlook Handbook* (the *Handbook*) and in the Occupational Information Network (O*NET). The director concluded that the proffered position is analogous to a registered nurse. Because the *Handbook* conveys that an associate degree is the minimum education required for a registered nurse, the director found that the proffered position is not a specialty occupation. Moreover, the director found that the proffered position requires a license.

On appeal, counsel states that the director erroneously concluded that the duties of the proffered position resemble those of a nurse. Counsel claims that the *DOT* and *Handbook* describe a rehabilitation services coordinator as a person involved in planning, designing, implementing, and monitoring rehabilitative treatment programs. Counsel states that rehabilitation work encompasses all areas of therapy and therapeutic treatment and extends beyond the knowledge of nursing. According to counsel, the DOL confirms that a rehabilitation services coordinator position is complex, assigning it an SVP of "8." Counsel claims that the proffered position does not fall within the context of a nurse, and does not perform duties of a quality assurance coordinator, a nursing position. Counsel asserts that a rehabilitation services coordinator organizes and integrates multidisciplinary services to meet rehabilitation goals and evaluate team member contributions and patients' progress. Finally, counsel states that the licensing requirement is irrelevant. Counsel submits three job announcements, pages from the revised second edition of the *Enhanced Guide for Occupational Exploration*; and job descriptions of a coordinator of rehabilitation services and quality assurance coordinator.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*1*) and (*2*): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Counsel claims that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because the DOL assigns it an SVP of "8" in the *DOT*. This claim is without merit. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL has replaced the *DOT* with the *Occupational Information Network* (*O*Net*). Both the *DOT and O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook*

provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the *DOT*.

Another of counsel claims is that a rehabilitation services coordinator plans, designs, implements, and monitors rehabilitative treatment programs; and organizes and integrates multidisciplinary services to meet rehabilitation goals and evaluate team member contributions and patients' progress. Counsel states that these responsibilities are not within context of a nurse or a quality assurance coordinator. Counsel submits job announcements to buttress these claims.

Counsel's claims are not persuasive. 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 previously stated, the AAO routinely consults the *Handbook* to provide comprehensive information about occupations. A review of the *Handbook* discloses that the duties of the proffered position reflect those of a physical therapist. The *Handbook* further states that all States require physical therapists to pass a licensure exam before can they practice, after graduating from an accredited physical therapist program. In 2001, there were 199 accredited programs. Of the accredited programs, 165 offered master's degrees and 33 offered doctoral degrees. By 2002, all physical therapist programs seeking accreditation are required to offer degrees at the master's degree level and above. Thus, according to the *Handbook*, the proffered position qualifies as a specialty occupation, and requires graduation from an accredited physical therapist program and licensure.

With respect to the submitted job announcements, the duties of the positions vary significantly from the beneficiary's proposed duties. As already related, the proposed position resembles that of a physical therapist.

No evidence contained in the record demonstrates that the beneficiary is qualified to perform the duties of a physical therapist. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of a physical therapist, and any other evidence the director may deem necessary. 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.

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.