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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

FILE: EAC 01 218 55290 OFFICE: VERMONT SERVICE CENTER DATE: JAN 0 9 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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a long-term healthcare and rehabilitation facility that currently employs 130 persons and has a gross annual income of $6,000,000. It seeks to employ the beneficiary as a quality assurance coordinator for a period of three years. The director denied the petition because he determined that the evidence failed to establish that (1) the proffered position is a specialty occupation, and (2) the beneficiary had the necessary license to serve in what the director saw as a registered nurse position.

On appeal, counsel submits a brief and a copy of evidence previously submitted.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an one 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.

On the Form I-129, the petitioner described the proffered position as "Quality Assurance Coordinator." Among other documents submitted with the Form I-129 was a letter of support from the petitioner's administrator, which listed these as the

duties of the proffered position:

(1) Plans, supervises, and coordinates quality assurance activities in all units of the facility;

(2) Works with facility's Director of Nursing and assures that all departmental procedures are followed in accordance with established policies on quality assurance standards;

(3) Interprets and implements quality assurance standards in all units of the facility to ensure quality care to patients;

(4) Review[s]quality assurance standards, studies existing hospital procedures, and interviews facility personnel and patients to evaluate effectiveness of quality assurance program in their respective units[;]

(5) Writes quality assurance policies and procedures;

(6) Reviews and evaluates patients' medical records, applying quality assurance criteria. Selects specific topics for review such as problem procedures, high volume cases, high risk cases, or other factors;

(7) Compiles statistical data and writes narrative reports summarizing quality assurance findings[. and]

(8) May oversee personnel engaged in quality assurance review of medical records.

The director issued a three-page request for additional evidence regarding a number of procedural and substantive issues. With regard to the specialty occupation issue, the director sought a more detailed record on the requirements of the proffered position. Evidence was requested concerning the number and types of patients served, the job requirements which justified the petitioner's assertion that the proffered position required at least a baccalaureate degree for what the director saw as nursing duties, and why the proposed duties could not be performed by a licensed registered nurse who holds less than a bachelor's degree.

The director also requested a detailed statement of the beneficiary's proposed duties and responsibilities. He also asked the petitioner to indicate how the beneficiary's

educational level relates to the proffered position. The request also sought duty-title and educational information on employees to be supervised, and copies of the in-house description of the proffered position and the job posting used to solicit candidates.

In response, counsel provided a letter with an appended legal brief that, in advocating that the proffered position is a specialty occupation, partly relied on the information that appears on quality assurance management coordinators in the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)*. The brief also asserted that a bachelor's degree in nursing is required for the proffered position, in light of the specific duties involved, the position's location in the petitioner's nursing facility, and the requirement to work directly with the facility's director of nursing.

The legal brief itself included several enclosures, of which the most relevant to the nature of the proffered position were: (1) a one-page "Position Evaluation Report" by an associate professor in the Division of Health Sciences at New York's Mercy College; (2) an advertisement for "QA Coordinator" at The Valley Hospital of Ridgewood, New Jersey; and (3) an advertisement for a "QA and Performance Improvement Specialist" at New York-Presbyterian Hospital of New York City.

In a three-page decision denying the petition, the director explained in detail the grounds for the denial. He made many assertions about the lack of an evidentiary basis for finding that the proffered position required a bachelor's degree in nursing, culminating in his statement to the effect that the petitioner's requirement for a bachelor's degree in nursing was "self-imposed," "perfunctory," and not justified by the actual duties of the position.

On appeal, counsel submits a brief which maintains, in part, that the proffered position is a specialty occupation. In this regard, counsel asserts that the proffered position is "administrative and managerial in function" and that its duties are "so specialized and complex that knowledge required to perform [them] is usually associated with the attainment of a baccalaureate degree." Counsel indicates that the director did not recognize that a bachelor's degree equips a nurse to hold administrative and management positions, but an associate degree does not. Counsel refers to the Mercy College document as evidentiary support of this point.

Counsel encloses another copy of the Mercy College document to demonstrate that, contrary to the director's view, "It is now an industry standard for the position of Quality Assurance Coordinator to have at least a Bachelor of Science Degree." Referring to an assertion by the director to the effect that the

petitioner does not have an established practice of requiring bachelor of nursing degrees, counsel asserts that New Jersey mandates quality assurance standards for healthcare facilities such as the petitioner's, and, "Being a mandatory requirement, the petitioner must hire a professional to handle its quality assurance program."

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.

Upon full review of the entire record, the AAO has determined that the petitioner has not established that the proffered position is a specialty occupation. As the following discussion will show, the evidence does not satisfy any of the qualifying criteria of 8 C.F.R. § 241.2(h)(4)(iii)(A).

I. Baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the particular position. -8 C.F.R. § 214.2 (h) (4) (iii) (A) (1).

As discussed below, the evidence does not satisfy this criterion's requirement.

The record indicates that the petitioner is a long-term care facility with 130 employees and 120 beds and that its services include rehabilitative care, post-surgical recovery, wound care, respiratory care, enteral therapy, pain management, and respite care. Counsel's appellate brief asserts that the beneficiary would not be involved in training, supervision, or evaluation of the nursing staff, but "will be responsible for the planning and coordination of quality assurance activities [among] the various units of the facility."

However, the record does not convey many particular details about what "quality assurance" will involve, despite the director's extensive request for information about the exact nature of the proffered duties.

Citizenship and Immigration Services (CIS) often looks to the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. In the 2002-2003 edition, the *Handbook* addresses registered nurses at pages 268 to 270.

At page 269, in a short paragraph on nurses who move into "the business side of healthcare," the *Handbook* notes that "quality assurance" is one of the areas for which healthcare corporations hire nurses. However, the *Handbook* does not venture into the issue of the educational requirements for such a position. Likewise, the following statement about the training and educational requirements for registered nurse positions, also from page 269, does not identify the proffered administrative-type position, or even administrative nursing positions in general, as normally (as opposed to "often") requiring a bachelor's degree or higher in nursing:

> There are three major educational paths to registered nursing: associate degree in nursing (A.D.N.), bachelor of science degree in nursing (B.S.N.), and diploma. . . . Generally, licensed graduates of any of the three program types qualify for entry-level positions as staff nurses.
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> . . . .
>
> . . . [S]ome career paths are open only to nurses with bachelor's or advanced degrees. A bachelor's degree is often necessary for administrative positions, and it is a prerequisite for admission to graduate nursing programs in research, consulting, teaching, or a clinical specialization.

The *Handbook*, then, does not indicate that the proffered position is of a type that normally requires a bachelor's degree or higher.

Counsel's response to the director's request for evidence had asserted, in part, that the proffered position is a specialty occupation because of the *DOT's* classification and SVP rating of a similar position. However, neither the *DOT* nor the *Occupational Information Network* (*O*Net*) which replaced it, is 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. Because these sources provide only general information regarding the education, training and experience required to perform the duties of a selected occupation, the AAO discounts them in favor of the *Handbook's* more comprehensive treatment of these occupational factors. For this reason, the AAO is not persuaded by counsel's *DOT* references.

The AAO does not find the Mercy College nursing professor's comments persuasive with regard to whether entry into the proffered position normally requires a bachelor's degree in nursing.

The professor does not state with particularity the basis of his "Position Evaluation Report": he only generally cites "statistics" and "our findings in the academic world." Equally important, it is not clear from the record that the proffered position parallels the duties and work context of the professor's Quality Assurance Coordinator, which he only generally describes as "a dynamic position that provides management, clinical, and educational leadership for high volume, state-of-the art programs at various health care institutions." For instance, it is not clear that the proffered position would have the "clinical and educational leadership" characteristics of the professor's Quality Assurance Coordinator, in that, as stated in the appellate brief, the beneficiary will not be assigned to training duties.

CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

As the evidence does not establish the proffered position as one that normally requires a bachelor's degree or higher in a specific specialty, the petitioner has not met the specialty occupation criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

II. Degree requirement that is common to the industry in parallel positions among similar organizations, or, alternatively, a particular position so complex or unique that it can be performed only by an individual with a degree.
-8 C.F.R. § 214.2 (h) (4) (iii) (A) (2).

A. Degree requirement common to the industry.

Factors often considered by CIS when determining the industry standard include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest

that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The two job advertisements have no probative value: there are only two of them, and their lack of details about the specific duties and working conditions of the two jobs makes it impossible to judge whether they are positions parallel to the one proffered here.

Finally, as discussed above, the *Handbook* does not indicate that the proffered position is one with an industry-wide requirement for a degree in a specific specialty.

B. Degree necessitated by the complexity or uniqueness of the position.

The record fails to establish that the particular duties of the proffered position are either so complex or so unique that only an individual with a bachelor's degree in nursing or any other specific specialty could perform them. The petitioner has not provided persuasive evidence that the duties would be out of reach for an experienced registered nurse with an associate degree. On this point it should be noted that assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The duties themselves, as enumerated and described in the record, appear neither especially complex nor unique.

The director was correct in not granting the petition under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

III. Degree or its equivalent as the employer's normal requirement for the position.
-8 C.F.R. § 214.2 (h) (4) (iii) (A)(3).

The absence of evidence on this issue will not allow a finding for the petitioner on 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

IV. Specific duties of a nature so specialized and complex as to require knowledge usually associated with a baccalaureate or higher degree.-8 C.F.R. § 14.2 (h) (4) (iii) (A) (4).

To the general extent that they are depicted, the quality assurance duties do not appear, alone or in combination, so specialized and complex as to require highly specialized knowledge associated with a bachelor's degree in nursing or any other specialty degree.

The fact that the duties are ascribed the title "Quality Assurance Coordinator" is of little probative value. The decisive factor is the actual nature of the specific duties themselves, and the level of detail about them in the record does not indicate any remarkable specialization or complexity that would place the position beyond the reach of an experienced registered nurse who is educated with an associate degree.

Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Because, as related in the discussions above, the petitioner has failed to establish any one of the four specialty occupation criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A), the AAO shall not disturb the director's denial of the petition.

In light of information on New Jersey law presented in counsel's brief, the AAO did not find a need to address the director's concern that the proffered position required a nursing license.

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.