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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, D.C. 20536

[redacted]

File: SRC-02-234-51712 Office: TEXAS SERVICE CENTER Date: JAN 22 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 Director of the Texas Service Center approved the nonimmigrant visa petition and certified her decision to the Administrative Appeals Office (AAO). The director's decision will be overturned. The petition will be denied.

The petitioner is a hospital with approximately 953 employees and a gross annual income of $33,424,024. It seeks to employ the beneficiary as an educational community health nursing coordinator for a period of three years. The director determined that the proposed duties are more advanced and complex than the duties of a registered nurse.

On certification, counsel did not present a brief or additional evidence.

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, in part, for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Manages and prepares the hospital's clinical educational program to ensure the quality of health care services.

2. Coordinates, develops and implements the quality improvement and education program and activities that support the objectives of the hospital.

3. Reviews and recommends improvements to current quality improvement and education program and activities.

4. Establishes, coordinates and acts as liaison with education and training providers to ensure the smooth implementation of training programs.

5. Actively promotes educational opportunities for employment.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the AAO does not agree that the proffered position would normally require a bachelor's degree in nursing or a related field. The proffered position appears to resemble a manager of a clinical education program, a position that is not found in the Department of Labor's *Occupational Outlook Handbook*. Although the proposed duties include managing and preparing the hospital's clinical educational program, the petitioner has not clarified the specifics of this program, such as whether the program already exists or whether the beneficiary would be creating the program. Furthermore, the petitioner has not described what topics will be covered by the petitioner's clinical educational program. It is incumbent on the petitioner to provide sufficient

information to demonstrate that the proffered position is a specialty occupation. As very little information is known about the petitioner's clinical educational program, the petitioner has not persuasively established that the beneficiary would be performing duties normally associated with a specialty occupation. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as nursing, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. The two job postings submitted by the petitioner are noted. The petitioner, however, has not demonstrated that the proposed duties of the proffered position are as complex as those listed in the job postings. For example, the first advertised position is that of an education coordinator for a hospital's emergency room job department, and the second advertised position is that of a staff clinician whose duties include designing, implementing, and evaluating educational activities for employees of the critical care division in nursing. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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 director's August 9, 2002 decision is overturned. The petition is denied.