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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: SRC 02 224 50099 OFFICE: TEXAS SERVICE CENTER DATE: JAN 27 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)

IN 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 the Bureau of Citizenship and Immigration Services (Bureau) 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, Texas Service Center, 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 provider of healthcare staffing that employs 2100 persons and has a gross annual income of $670,000,000. It seeks to employ the beneficiary as a nurse supervisor. The director denied the petition because she found that the evidence did not support classification of the proffered position as a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the duties of the proffered position exceed those attributed to a standard registered nurse position, and, as such, require an incumbent with a bachelor's degree.

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.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation. Section 214(i)(1) of 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

> [A]n 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.

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 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. In the original petition, the petitioner described the duties of the proffered position as follows:

- Plan, organize, and direct activities for the nursing department night shift;
- Establish policies and procedures for the nursing department, following directions of hospital administrators;
- Observe the nursing staff to ensure adherence to hospital guidelines;
- Train nursing students and new personnel;
- Handle certain personnel and supply problems;

- Prepare work schedules and assign duties to nursing staff; and
- Assign staff during emergencies.

The record contains the following documentation regarding whether the proffered position is a specialty occupation:

- A memo from NCH Healthcare System, a competitor of the petitioner's, confirming that NCH requires nurse supervisors to hold a bachelor's degree or its equivalent;
- A letter from the human resources director at JFK Medical Center asserting that unnamed participants in the Global Nursing Perspective Conference agreed that future nurse supervisor positions should require "a degree";
- A memo from the petitioner's international operations manager to its human resources department noting the petitioner's policy decision that all of its nurse supervisors "should be educated to a degree standard"; and
- A letter from East Houston Regional Medical Center to the petitioner's human resource department stating that the hospital requires all nurse supervisors to "be educated to a degree level" and hold eight years of experience.

The director determined that the offered position was not essentially different from that of a registered nurse, which does not require a minimum of a bachelor's degree. On appeal, counsel asserts that the offered position is far more specialized and complex than that of a registered nurse; thus, it requires a bachelor's degree.

A review of the entire record does not support a conclusion that the proffered position constitutes a specialty occupation. Regarding the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), the evidence does not establish that a bachelor's degree in a specific specialty is a minimum requirement to enter into the position of nurse supervisor. The Department of Labor's *Occupational Outlook Handbook (Handbook)* indicates that an associate degree in nursing is sufficient to perform the duties of a registered nurse. The *Handbook* does not suggest that the mere fact that a nurse has supervisory duties mandates a bachelor's degree requirement. The critical element in the analysis of this criterion is not the employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the

occupation as required by the Act. [1]

With respect to the second and third criteria, the evidence on the record, including the four letters/memos cited above, do not show that a bachelor's degree is a minimum requirement common to the health care industry, nor that the petitioner normally requires a degree for this position. The letters and NCH memo state the hiring preferences of two health care providers and the conclusions drawn by individuals in attendance at a nursing convention. The memo from the petitioner's international operations manager informs its human resources department of a policy decision to hire degreed nurse supervisors, but the record contains no documentation to establish the petitioner's actual hiring practices. Finally, the record does not establish the fourth criterion above, as there is no evidence that the proffered position is more complex or specialized than other supervisory nurse positions.

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.

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[1] The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2 (h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition. See *Defensor v. Meissner* 201 F.3d 388 (5th Cir. 2000)