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

U.S. Citizenship and Immigration Services

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JAN 27 2004

FILE: SRC 02 246 50582 Office: TEXAS 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:

[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 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 hospital that seeks to employ the beneficiary as an educational community health nursing 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 did not appear qualified to perform the duties of the position. On appeal, counsel submits a brief.

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 further evidence, dated August 22, 2002; (3) the petitioner's response to the director's notice; (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 an educational community health nursing coordinator.

Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's March 21, 2002 letter in support of the petition; and the petitioner's response to the director's request for further evidence. According to this evidence, the beneficiary would perform duties that entail: management and preparation of the hospital's clinical education program; coordination, development, and implementation of the petitioner's quality improvement and educational program and activities that support the objectives of the hospital; the review and submission of recommendations for improvement to quality improvement and educational programs and activities; the establishment, and coordination of liaison functions with the educational and training providers to ensure the smooth implementation of training programs; and the active promotion of educational opportunities for employment. The petitioner indicated that a bachelor's degree in any medical field was required for entry into the position with a degree in nursing being preferable. The petitioner also required a job applicant to have at least two years of experience in clinical teaching.

The director found that the proffered position was not a specialty occupation because the petitioner had not met any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). The director referred to the position as a registered nurse position and stated that the creation of a position with a perfunctory bachelor's degree requirement was insufficient to establish that the position was a specialty occupation. With regard to the beneficiary's qualifications, the director did not find that the letter submitted by De Los Santos College as to the beneficiary's experience in clinical instruction from January 1993 to June 1994 provided enough detail to establish that the beneficiary qualified to perform the duties of the position.

On appeal, the petitioner states that the proffered position is much more than a staff nurse or registered nurse position, since it involves no patient care. The petitioner states that a licensed registered nurse who possesses only an associate degree in nursing would not be sufficient for the preferred position, which is a leadership role involved with the preparation of the hospital's training program. The petitioner finally states that no hospital or facility that has the same job description hires candidates in parallel positions who do not possess bachelor's or master's degrees. The petitioner resubmits two job vacancies originally submitted with the petitioner's response to the director's request for further evidence.

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.

Factors often considered by CIS when determining these criteria 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." *See 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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the director that the proffered position is that of a registered nurse. The job description submitted by the petitioner contains no duties that involve direct care of patients or other duties associated with an entry level registered nursing position. Nevertheless the job position provides no additional details to demonstrate what specific duties exactly the proffered position

would entail. For example, the job description submitted by the petitioner lists no specific training functions, or departments, even though the job title mentions community health nursing. The job description also contains such generic duties as "promotes educational opportunities for employment" and "coordinates the quality improvement and education program and activities that support the objectives of the hospital." There are no specific details or further explanation as to what specific training would be planned, the existing quality improvement program, or the extent of the clinical education program. Without more specific details, the petitioner has not established that the position is a specialty occupation that requires a baccalaureate degree in a specific specialty. It should also be noted that in its original submission of information with regard to the labor condition application (LCA), the petitioner listed no specific baccalaureate degree, bur rather just stated that a baccalaureate degree in any medical specialty was sufficient. As previously stated, 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.

Regarding parallel positions in the petitioner's industry, the petitioner submitted job postings for its own position, as well as two job vacancy announcements for two other hospitals. Although both of the job vacancy announcements are for medical facilities, based on the lack of detail with regard to the job duties for the proffered position discussed previously, the petitioner did not establish that its proffered position is on the same level as the other two job vacancies. For example, the vacancy at Texas Children's Hospital for an education coordinator position lists specific components of the overall education program for nurses, including orientation, annual competency assessments, preceptor orientation and development, among other areas. The job vacancy for Jackson Hospital for a clinician, specialty care, is also specific with its reference to educational activities for employees of the critical care division. Although the petitioner on appeal states that no hospital or facility that has the same job description hires candidates in parallel positions who do not possess bachelor's or master's degrees, it provides no documentation to support this broad assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*2*).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) – the employer normally requires a degree or its equivalent for the position. The petitioner provided no information on any employees, previously or currently employed in the same position, and their academic credentials. The record contains no evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(iii)(A)(*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. As previously stated, the job description submitted by the petitioner in the original petition is viewed as lacking in details. Furthermore, the petitioner provided no additional explanation of the duties of the proffered position either in its response to the director's request for further evidence or on appeal. The petitioner's statement on appeal that the proffered position involves work in a leadership capacity is not sufficient to establish the complexity or specialized nature of the position.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent,

in a specific specialty. 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*).

As related in the discussion above, 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.