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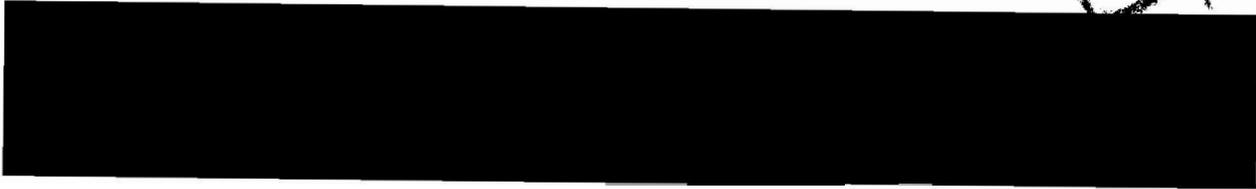
U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 138 52948 Office: CALIFORNIA SERVICE CENTER Date: **NOV 03 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a convalescent hospital for the elderly. It seeks to employ the beneficiary as a nurse team leader and to classify her 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 on the ground that the record failed to establish that the proffered position is 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a 99-bed skilled nursing facility that provides 24-hour nursing for long- and short-term residents with services such as hospice and respite care, IV therapy, occupational therapy, pain

management, respiratory therapy, and restorative nursing. The petitioner states that the hospital incorporates a bone scan and x-ray laboratory, dialysis equipment, and a pharmacy among its installations and services. The petitioner indicates that the hospital was established in 1986, has 80 employees, and earns a gross annual income of approximately \$3.5 million. The petitioner proposes to hire the beneficiary for the position of nurse team leader, with responsibility for the overall management of the nursing unit, and asserts that the position is in the nature of a health services manager, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The specific duties of the position, and the percentage of time required by each, are described in the petitioner's initial letter to the service center and in its response to the RFE as follows:

- 20% Interpreting hospital policies and procedures: The facility has two policies and procedures manuals which relate to operational and nursing policies and procedures [which are drafted in conformity with federal and state regulations]. [The beneficiary] is in charge of interpreting those manuals and regulations providing clear and straight instructions to all personnel in the nursing unit. She will confer with the general administrator and governing body of the facility to modify, adapt and update techniques of the policy itself, conforming as needed, in order to optimize quality of care in the skilled nursing facility. [The beneficiary] must have analytical criteria to not only adequately interpret the policies and procedures, but also to identify conflicts and problems, draw conclusions and propose changes of techniques to the Board.
- 10% Establishing systems of records and preparing reports and records on nursing unit activities, submitting written monthly reports about the current status of the nursing service to the general administrator, which includes recommendations for needed changes and other items as required by facility policy. Analyzing reports and records and obtaining data for planning unit activities such as new establishment's goals and status of work in progress.
- 20% Maintaining contact with physicians as necessary according to individual patient care plan, integrated with facility's policies and governmental regulations. The facility holds weekly care plan meetings with the general administrator, the team nurse leader, and licensed nurses (a/k/a the "patient care policy committee"). The nursing care plan reviews each patient case in particular in order to maintain the highest level of functioning for each patient as demanded by the regulations. Each patient has a plan in his chart, which is elaborated during those meetings, to reach the nurses' goals.
- 10% Researching patient records and elaborating reports, collaborating with physicians in patient plan: Assumes responsibilities for coordinating plan for the total care of each patient which complies with physician orders, governmental regulations, and facility's patient care policies and standards for nursing practice.
- 10% Participating in training and educational programs: [The beneficiary] will be in charge of staff development. She will assume implementation of in-service continuing programs for all staff members in the unit to ensure compliance with federal, state and local regulations pertaining to long-term care.

- 20% Assigning and supervising personnel: Assigning and delegating functional responsibilities, determining schedules, coordinating jobs and routines for the personnel. Supervising and evaluating professional and nonprofessional personnel in the use of equipment, lab devices and other unit systems. Participates in initiating and authorizing nurses and non-professional employee hire, promotion, discharge, or transfer in the nursing unit.
- 5% Evaluating information to be shared with outside nursing personnel and allied services for continuity of patient care. Coordinating activities of the nursing department with other departments (dietary, housekeeping, maintenance, laundry, social services and activities) within the establishment to ensure efficiency, quality of service and economy, including but not limited to orientation for all personnel with ongoing in-service programs.
- 2.5% Employee Orientation of Fire and Disaster Manual. Promotes a safe environment within the facility, which includes fire and accident prevention maintenance of sanitary conditions and assurance that all nursing personnel understand their roles in the event of a disaster or other disruption of services.
- 2.5% Monitoring equipment and instructing personnel in its use: [The beneficiary] will monitor equipment and facilities to ensure optimum operating conditions, safety and need for repair/maintenance.

The minimum qualifications for the job, the petitioner asserts, are a bachelor's degree in nursing and management experience. The beneficiary is qualified for the position, the petitioner declares, by virtue of her bachelor of science degree in nursing from Perpetual Help College in Manila, the Philippines, awarded on March 24, 1993, along with more than ten years of nursing experience, the last position of which includes supervisory responsibilities.

The service center director determined that the proffered position is not a specialty occupation. The director found that the duties of the proffered position are not those of a health services manager, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. Rather, they are similar to the duties of a head nurse or nurse supervisor, as described in the *Handbook*, which do not normally require a baccalaureate or higher degree in nursing or any other specialty. The record did not establish that a bachelor's degree in nursing is the standard requirement for parallel positions in the petitioner's industry, the director stated, or that the duties of the proffered position are so specialized and complex that knowledge usually associated with a baccalaureate or higher degree is required to perform them. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel reiterates the petitioner's contention that the duties of the proffered position are those of a health services manager, as described in the *Handbook*, which qualifies as a specialty occupation because, as indicated in the *Handbook*, a baccalaureate or master's degree is required for entry into such a position. Counsel submits several letters from other healthcare organizations in the Greater Los Angeles area as evidence that a bachelor's degree in nursing is the standard industry requirement for the proffered position. Counsel also asserts that the duties of the proffered position are so specialized and complex that baccalaureate level knowledge is required to perform them.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO determines that the duties of the nurse team leader at issue in this petition accord with the *Handbook's* description of a nurse administrator and, to a lesser extent, nurse educator, which are sub-categories within the broad occupation of registered nurses. As described in the *Handbook*, 2006-07 edition, at 303-05:

Registered nurses (RNs), regardless of specialty or work setting, perform basic duties that include treating patients, educating patients and the public about various medical conditions, and providing advice and emotional support to patients' family members. RNs record patients' medical histories and symptoms, help to perform diagnostic tests and analyze results, operate medical machinery, administer treatment and medications, and help with patient follow-up and rehabilitation.

. . . .

Most RNs work as staff nurses, providing critical health care services along with physicians, surgeons, and other health care practitioners

Some nurses have jobs that require little or no direct patient contact *Nurse administrators* supervise nursing staff, establish work schedules and budgets, and maintain medical supply inventories. *Nurse educators* teach student nurses and also provide continuing education for RNs

With respect to the educational requirements for nursing positions, the *Handbook* indicates that there are three alternative paths for registered nurses generally. They include a four-year B.S.N. degree from a college or university; a two- or three-year associate degree in nursing (A.D.N.) from a community or junior college; and a diploma program, usually three years, at a hospital. See *id.* at 305-06. Thus, the *Handbook* makes clear that a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into a registered nursing position. Less than baccalaureate level education may suffice for many positions. Certain advanced practice nurses, the *Handbook* notes, have educational and clinical requirements beyond those generally applicable to all RNs. However, there is no indication in the *Handbook* that nurse administrators or nurse educators, though their duties may exceed those of some other registered nurses, require a B.S.N. as a minimum degree requirement for entry into such a position. According to the *Handbook*, therefore, a baccalaureate or higher degree in the specific specialty of nursing – *i.e.*, a B.S.N. – is not the minimum requirement for entry into the nursing position proffered by the petitioner, as required to meet the first alternative criterion of a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

A policy memorandum from the legacy Immigration and Naturalization Service in November 2002 (*H-1B Memorandum*) provides additional guidance for CIS on the adjudication of H-1B petitions for registered nurses.¹ In surveying the educational requirements for the nursing occupation, the *H-1B Memorandum* notes that the minimum requirement for entry into the field as a registered nurse is a two-year associate degree in nursing (A.D.N.). Though a four-year B.S.N. can be earned at some U.S. and foreign universities, the degree is not required for most entry-level nursing positions in the United States. The *H-1B Memorandum* indicates that certain advanced practice nurses – such as clinical nurse specialists, nurse practitioners, certified registered nurse anesthetists, or certified nurse-midwives – do require a B.S.N. or higher degree, which makes them specialty occupations. Likewise, some nursing specialties – such as critical care, peri-operative, rehabilitation nursing, oncology, and pediatric nursing – require a B.S.N. or equivalent knowledge, making them specialty occupations as well. In addition, some nurses in high-level management positions – “such as an upper-level ‘nurse manager’ in a hospital administration,” according to the *H-1B Memorandum* – require a B.S.N. or higher degree, making them specialty occupations.

The position at issue in this petition, however, is not an “upper-level nurse manager” within the contemplation of the *H-1B Memorandum*. The organizational chart submitted by the petitioner indicates that the proffered position – nurse team leader – supervises the nursing unit consisting of an assistant nurse team leader, “charge nurses,” and nurse assistant-orderlies. The petitioner does not indicate how many employees comprise its nursing unit, though the employee list submitted with the organizational chart identifies four registered nurses, four RNAs, 16 LVNs (licensed vocational nurses), and 35 CNAs (certified nurse assistants). The organizational chart shows that the nurse team leader reports to the hospital’s administrator, who in turn reports to the governing body. The foregoing evidence indicates that the nurse team leader at issue in this petition is a middle-management position. Although the proffered position involves first-line supervision of nurses and other healthcare aides, such duties do not enhance the position to that of an upper-level nurse manager. There is no indication in the *H-1B Memorandum* that a nurse team leader, or a nurse administrator, or a nurse educator, though their duties may exceed those of some other registered nurses, require a B.S.N. as a minimum degree requirement for entry into such a position. Accordingly, the AAO determines that a baccalaureate or higher degree in the specific specialty of nursing – *i.e.*, a B.S.N. – is not the normal minimum requirement for entry into the nursing position proffered by the petitioner, as required to meet the first alternative criterion of a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Counsel suggests that the proffered position fits the *Handbook*’s description of a health services manager, a position that normally requires a baccalaureate or higher degree in a specific specialty and therefore qualifies as a specialty occupation. The occupational category of medical and health services managers is described as follows in the *Handbook*, 2006-07 edition, at 59-60:

Medical and health services managers, also referred to as *health care executives* or *health care administrators*, plan, direct, coordinate, and supervise the delivery of health care. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system.

....

¹ Memorandum of Johnny N. Williams, Executive Associate Commissioner, INS Office of Field Operations, *Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses*, HQISD 70/6.2.8-P (November 27, 2002).

Large facilities usually have several assistant administrators to aid the top administrator and to handle daily decisions. Assistant administrators may direct activities in clinical areas such as nursing, surgery, therapy, medical records, or health information

In smaller facilities, top administrators handle more of the details of daily operations. For example, many nursing home administrators manage personnel, finances, facility operations, and admissions and also have a larger role in resident care.

Clinical managers have training or experience in a specific clinical area and, accordingly, have more specific responsibilities than do generalists. For example, directors of physical therapy are experienced physical therapists, and most health information and medical record administrators have a bachelor's degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

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A small group of 10 to 15 physicians might employ one administrator to oversee personnel matters, billing and collection, budgeting, planning, equipment outlays, and patient flow. A large practice of 40 to 50 might have a chief administrator and several assistants, each responsible for different areas.

Some medical and health services managers oversee the activities of a number of facilities in health systems . . . [which] might contain both inpatient and outpatient facilities and offer a wide range of patient services.

The duties of a health services manager, as described in the *Handbook*, exceed those of the nurse team leader at issue in this petition with respect to their scope of managerial responsibility and the knowledge required to perform them. The petitioner's nurse team leader is subordinate not only to the governing board but also to the administrator of the facility. The duties of the nurse team leader, as described by the petitioner, are not at the level of a health services manager.

With respect to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), counsel submits on appeal letters from four organizations in the same line of business as the petitioner – [REDACTED], and [REDACTED] – all located in the Greater Los Angeles area. The letters, which are drafted in identical language, state that the respective organizations have a director of nursing position with duties similar to those of the petitioner's nurse team leader and that the minimum requirement for the position is a bachelor's degree in nursing and two years of experience. Insofar as the letters do not appear to have been drafted by their signatories, their evidentiary weight is lessened. The letters are signed and dated by representatives of the respective companies, though two of them do not provide their titles, and they identify the organizations as skilled nursing facilities for the elderly with employee totals ranging from 28 to 90. None of the letters provides an independent description of the duties its director of nursing carries out, however, quoting instead the petitioner's description of its nurse team leader position. The letters do not identify any current or past individuals in the director of nursing positions, and are not accompanied by any

documentary evidence of the B.S.N. degrees the facilities claim their directors of nursing possess. Going on record without supporting documentation does not satisfy the petitioner's burden of proof. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190, 193-94 (Reg. Comm. 1972). The AAO concludes that the proffered position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) because the evidence of record does not establish that the requirement of a B.S.N. or related degree is common to the petitioner's industry in parallel positions among similar organizations. Nor has the petitioner demonstrated that its nursing position is so complex or unique that it can only be performed by an individual with a B.S.N. degree, as required to qualify it as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The position is not unique, and the record does not show a level of complexity beyond that of a nurse administrator and nurse educator, positions which the *Handbook* indicates do not require a baccalaureate or higher degree in nursing or a related specialty.

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), counsel asserts that the petitioner normally requires a bachelor's degree in nursing or human sciences for its nurse team leader position, thereby qualifying it as a specialty occupation. The petitioner states that its previous employee in the position had a B.S.N. and three years of experience managing a hospital nursing unit. The petitioner has not identified the previous employee, however, nor provided any documentary evidence that he or she was actually employed by the petitioner, for how long, and in what capacity. Nor does the record contain any evidence of that individual's B.S.N. In addition, the petitioner has furnished no evidence of earlier employees in the nurse team leader position and their educational degrees covering the 20-year period of the facility's operation since 1986. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190, 193-94 (Reg. Comm. 1972). Furthermore, the critical issue in determining whether the nurse team leader qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not the employer's self-imposed standard, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in the specific specialty as a minimum for entry into the occupation. Cf. *Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000). For the reasons previously discussed in this decision, the AAO is not persuaded that the performance demands of the nurse team leader at issue in this petition – which do not exceed the scope of a nurse administrator and nurse educator as described in the *Handbook* – require a B.S.N. degree. The AAO concludes that the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the record does not show that the duties of the proffered position are so specialized and complex that knowledge associated with a B.S.N. is required to perform them, as required for the position to meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The duties of the position do not exceed those of a nurse administrator and nurse educator, positions which the *Handbook* indicates do not generally require baccalaureate level knowledge in nursing or a related specialty. Based on the evidence of record, the AAO concludes that the duties of the proffered position could be performed by an experienced individual without baccalaureate level knowledge in a nursing or a related specialty.

For the reasons discussed above, the record does not establish that the proffered position meets any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a

specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.