



U.S. Citizenship
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FILE: SRC 04 073 50687 Office: TEXAS SERVICE CENTER Date: AUG 02 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:

SELF-REPRESENTED

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 director of the service center 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 nursing home that seeks to employ the beneficiary as a field supervisor. The petitioner, therefore, 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. On appeal, the petitioner states that the proffered position qualifies as a specialty occupation, and submits previously submitted evidence.

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.

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 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 a field supervisor. Evidence of the beneficiary's duties includes: the Form I-129 and the letter accompanying the Form I-129. According to this evidence, the beneficiary would perform duties that entail monitoring and evaluating the appropriateness and cost-effectiveness of care by identifying homecare needs, collaborating with discharge planners, social workers, therapists, and staff nurses, by coordinating healthcare teams and managers, and by liaising with physicians in planning and implementing mutual patient care objectives. The beneficiary will manage and supervise healthcare personnel including nurses, home health aides, rehabilitation therapists, dieticians, and hospice care teams by scheduling and assigning teams, triaging referrals, solving problems, and educating staff regarding patient risks and patient management, and by assuring that healthcare teams satisfy care standards. The beneficiary will also conduct audits of clinical and financial information for quality assurance and reimbursement by using clinical nursing judgment in evaluating requests for procedures, services, and equipment, by responding to telephone and other requests for certification and authorization of patient procedures, services, and appeals, and by corresponding with the business office for codes for services and medical diagnosis for reimbursement. Finally, the beneficiary will participate in community-based activities to promote healthcare such as planning and implementing healthcare educational programs about diabetes, obesity, and infection control. The petitioner stated that the proposed position requires a baccalaureate degree in nursing (B.S.N.).

The director denied the petition, finding that the proffered position resembles a registered nurse (RN) as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* indicates that an RN does not require a baccalaureate degree in nursing.

On appeal, the petitioner states that it normally requires a baccalaureate degree for the proposed position; that the submitted job postings establish that employers in the healthcare industry require a baccalaureate degree for similar positions; that the proposed position parallels a nurse supervisor as that occupation is described in the *Dictionary of Occupational Titles* (DOT); and that in light of the proposed position and its impact on business operations, and the expanded role of a nurse, which exceeds the *Handbook* description of an RN, the proposed position requires a baccalaureate degree in a specific specialty. The petitioner discusses the role of a nurse with advanced training and strong clinical expertise and nursing care in the community.

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 first considers 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The petitioner asserts that the proposed position is a specialty occupation because it parallels a nurse supervisor as that occupation is described in the [REDACTED]. However, the [REDACTED] is not 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. The DOL has replaced the [REDACTED] with the [REDACTED]. Both the [REDACTED] and the [REDACTED] provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proposed position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the [REDACTED].

The *Handbook* states the following about the training and educational requirements for RN positions:

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.

...

. . . [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* does not elaborate on administrative nursing positions within this classification, although reference is made to two nursing positions within the classification of an RN that appear analogous to the proffered position. The *Handbook* states the following about head nurses or nurse supervisors:

Head nurses or nurse supervisors direct nursing activities. They plan work schedules and assign duties to nurses and aides, provide or arrange for training, and visit patients to observe nurses and to ensure the proper delivery of care. They also may see that records are maintained and equipment and supplies are ordered.

The proffered position seems to resemble a nursing position beyond an entry-level RN, but it is not analogous to an administrative nursing position. The nurse memo provides the following commentary on administrative nursing positions: "Nursing Services Administrators are generally supervisory level nurses who hold an RN, and a graduate degree in nursing or health administration. (See Bureau of Labor Statistics, U.S. Dep't of

Labor, Occupational Outlook Handbook at 75.)”¹ The *Handbook’s* reference to the classification of medical and health services manager states:

The term “medical and health services manager” encompasses all individuals who plan, direct, coordinate and supervise the delivery of healthcare. 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.

With the case at bar, the petitioner does not seek a candidate with a graduate degree in nursing or health administration. Nor does the petitioner seek an RN. As such, the petitioner’s educational requirements differ from the nurse memo’s commentary on administrative nursing positions. The proffered position’s duties seem to encompass those of a medical and health services manager; however, the *Handbook* describes nursing service administrators as usually being chosen from among supervisory RNs with administrative abilities and a graduate degree in nursing or health services administration. This differs from the petitioner’s educational requirement, which is only a B.S.N. Consequently, the proffered position does not rise to the level of a nursing service administrator as that occupation is described in the *Handbook*.

As discussed above, the proffered position resembles a nursing position beyond the entry-level RN, but it does not rise to the level of an administrative nursing position. Accordingly, the petitioner fails to establish the first criterion: that a baccalaureate or higher degree or its equivalent is not the normal minimum requirement for entry into the particular position.

The job postings fail to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - that the degree requirement is common to the industry in parallel positions among similar organizations. Unlike the petitioner, the employers in the job postings require RN licensure; thus, their positions are not parallel to the proposed position. As such, the petitioner fails to establish the second criterion.

No evidence establishes that the particular position is so complex or unique that it can be performed only by a person with a degree in a specific specialty. As discussed earlier in this decision, the proffered position resembles a nursing position beyond the entry-level RN; but it does not rise to the level of an administrative nursing position. Consequently, the evidence fails to establish that the particular position is so complex or unique that it can be performed only by a person with a degree in a specific specialty.

The petitioner asserts that it satisfies the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner establish that it normally requires a degree or its equivalent for the position, because its five field supervisors hold B.S.N. degrees. However, the petitioner's creation of a position with a perfunctory bachelor's

¹ Memorandum from 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).

degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an 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 baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.² To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. As discussed earlier in this decision, the AAO's conclusion, based on the evidence in the record as well as the *Handbook* information, is that the proposed position rises above the level of an entry-level RN, but it falls short of rising to the level of an administrative nursing position. Accordingly, the proposed position fails to qualify as a specialty occupation.

The evidence in the record is inadequate to establish that the nature of the specific 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. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). As shown in this decision, the proposed position rises above the level of an entry-level RN; but no evidence establishes that it rises to the level of an administrative nursing position. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 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.

² 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 id.* at 387.