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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 02 184 50721 Office: CALIFORNIA SERVICE CENTER Date: **AUG 09 2005**

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, Director
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 The director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner is a healthcare provider that offers a range of nursing and caregiving services. It seeks to employ the beneficiary as an associate administrator 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 beneficiary is not qualified to perform the services of the pertinent specialty occupation. A timely appeal (Form I-290B) was filed on December 4, 2003, on which counsel indicated that a brief and/or evidence would be submitted to the AAO within 30 days. On July 8, 2004 the AAO summarily dismissed the appeal on the ground that no such brief or evidence was submitted and the petitioner had failed to identify in the appeal any erroneous conclusion of law or statement of fact in the director's decision. Counsel filed a timely motion to reopen or reconsider, asserting that a timely appeal brief had been filed. Counsel subsequently submitted a copy of its appeal brief, dated December 31, 2003, along with evidence that it was received by the California Service Center on January 2, 2004. The AAO determines that counsel's motion satisfies the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3). Accordingly, the petitioner's appeal will be considered on the merits.

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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform the services of a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains (1) Form I-129 and supporting documentation; (2) the service center's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the decisions of the service center and the AAO, and (5) Form I-290B, the appeal brief, the motion to reconsider/reopen, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In a letter accompanying Form I-129 the petitioner described itself as a provider of personal care rehabilitation services including physical, occupational, speech and respiratory therapies, as well as the management and/or treatment of various illnesses and disorders. The petitioner indicated that it was established in 1995, had 35 employees, and wished to hire the beneficiary as an associate administrator. The duties of the position were described as follows:

[A]dminister the interpretation, analyzation [sic] and the implementation of quality standards, formulate solutions to complaints, monitor each nurse to make sure they have the required training, instruction, or continuing education in accordance with the Board of Nursing, review the performance of each nurse before renewing their contracts
[I]mplement a communication/information system between the client, nurses and personnel department to monitor, avoid and eventually eliminate tardiness and truancy, evaluate each employee's license, schedule monthly training of the nurses and nursing assistants [A]lso focus on preventive care.

The beneficiary would be responsible for improving the efficiency and quality of healthcare services, the petitioner explained, and her duties would encompass "both the clinical and non-clinical administration" of the healthcare facilities. According to the petitioner, the duties of the proffered position are similar to those of a health services manager, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, the minimum requirement for which is a bachelor's degree. The petitioner stated that it required a bachelor's degree in a health-related field for the proffered position, and that the beneficiary fulfilled this requirement with her bachelor of science in nursing from St. Jude College in Manila, the Philippines, granted on April 3, 1995. In response to the RFE the petitioner asserted that the associate administrator position met all four criteria of a specialty occupation enumerated in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The director agreed with the petitioner that the duties of the proffered position reflected those of a health services manager, as described in the DOL *Handbook*, but also found that such a position required a degree in health administration or business. Since the beneficiary's degree is not in one of those fields, but rather in nursing, the director determined that she did not have the requisite degree for the associate administrator position. Nor did the beneficiary qualify under any other criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(C) to perform services in the specialty occupation. The director concluded, therefore, that the beneficiary was not qualified to perform the services of the pertinent specialty occupation.

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. Slattery*, 764 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 *Handbook* describes the occupational category of medical and health services managers, in pertinent part, as follows:

The occupation, 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.

. . . . Future medical and health services managers must be prepared to deal with evolving integrated healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring at work, and an increased focus on preventive care. They will be called upon to improve efficiency in healthcare facilities and the quality of the healthcare provided

Large facilities usually have several assistant administrators to aid the top administrator and to handle daily decisions

In smaller facilities, top administrators handle more of the details of daily operations

Handbook, 2004-05 edition, at 55-56. The *Handbook* goes on to explain the educational requirements of the occupation, in pertinent part, as follows:

Medical and health services managers must be familiar with management principles and practices. A master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business

administration is the standard credential for most generalist positions in this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations

Graduates with bachelor's degrees in health administration usually begin as administrative assistants or assistant department heads in larger hospitals. They also may begin as department heads or assistant administrators in small hospitals or nursing care facilities.

Handbook, id., at 56-57. Thus, the *Handbook* indicates that a bachelor's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the minimum requirement for entry into an assistant or associate administrator position in a smaller healthcare operation. The AAO concludes that such a position would qualify as a specialty occupation under section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1).

On appeal counsel asserts that the director misinterpreted the *Handbook's* description of the educational requirements for an associate administrator position in a healthcare facility. In counsel's view the *Handbook* "specifically states that a bachelor's degree is adequate for entry-level positions in smaller facilities," and while "a bachelor's degree in health administration or business may be preferred in some positions, it is not necessarily required for all positions." According to counsel, the *Handbook* "declared that a bachelor's degree, *without specifying the field of study*, is sufficient for entry level administrator positions." [Emphasis added.] The beneficiary's bachelor of science in nursing is "especially relevant" to the proffered position, counsel contends, and qualifies her to perform the services of the specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The AAO agrees with counsel's contention that the beneficiary is qualified to perform the services of an entry-level health services manager, but not because a bachelor's degree in any field of study is sufficient to qualify for such a position. The beneficiary would be qualified for such a position at a smaller health care facility because her bachelor of science in nursing is a degree in one of the specific specialties – *i.e.*, health sciences – identified in the *Handbook* as suitable for an entry-level manager or administrator position in a smaller nursing care facility. According to an educational credentials evaluation in the record, the beneficiary's degree from St. Jude College in the Philippines is equivalent to a bachelor's degree in nursing from a U.S. college or university.

However, the AAO is not persuaded that the duties of the proffered position are those of a health services manager, as described in the *Handbook*. Rather, the duties of the associate administrator position in the petitioner's 35-employee healthcare business more closely resemble those of a head nurse or nurse supervisor. That occupation is described as follows in the *Handbook*, 2004-05 edition, at page 302:

Head nurses or nurse supervisors direct nursing activities, particularly in hospitals. 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 that the patients receive proper care. They also may ensure that records are maintained and equipment and supplies are ordered.

The director's decision must be withdrawn and the case remanded for a new decision as to whether the proffered head nurse or nurse supervisor position qualifies as a specialty occupation under section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1) – *i.e.*, whether it requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in a specific specialty as a minimum requirement for entry into the occupation in the United States – and meets one or more of the criteria enumerated in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director must afford the petitioner reasonable time to provide pertinent evidence. The director shall then issue a new decision based on the evidence of record. As always, the burden of proof rests with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision of November 7, 2003 is withdrawn. The petition is remanded to the director for entry of a new decision. If the decision is adverse to the petitioner, it shall be certified to the AAO for review.