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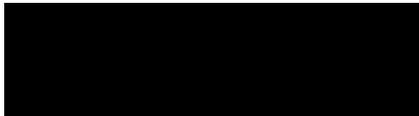
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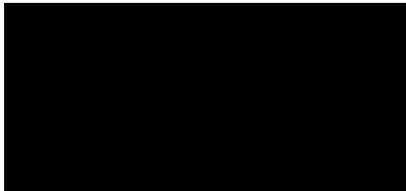
FILE: EAC 03 048 54906 Office: VERMONT SERVICE CENTER ~~PR~~ Date: AUG 17 2005

IN RE: Petitioner:
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:



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 staffing and recruitment company that seeks to employ the beneficiary as an employment and placement supervisor (nursing services). 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 on the grounds that: (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief and previously submitted evidence.

The AAO will first address whether the proposed position 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.

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 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 entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an employment and placement supervisor (nursing services). Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: managing recruitment, placement, and employment of healthcare professionals such as registered nurses (RN), licensed practical nurses (LPN) and certified nursing assistants (CNA) for medical and nursing facilities; planning and directing the recruitment, employment, and placement activities of the staff that develop sources of qualified applicants, screen interviews, administer tests, check references and backgrounds, and evaluate qualifications; keeping records and compiling statistical reports concerning recruitment, interviews, hires, transfers, promotions, terminations, and performance appraisals all of which require knowledge of job requirements, selection processes, and legislation about equal employment practices; coordinating employment activities such as assigning healthcare professionals to facilities, preparing job requisitions, conducting interviews, selecting and hiring applicants; conducting on-the-job training, supervisory follow-up, and rating of employees assigned to facilities; analyzing statistical data and other reports concerning employment functions in order to identify personnel problems and develop recommendations to improve performance. For the proposed position the petitioner requires a bachelor's degree with a major in nursing, or its equivalent, and one year of experience.

The director was not persuaded that the beneficiary would not perform duties involving patient care, which require a RN license. The director stated that a bachelor's degree in nursing (BSN) is not required for the proposed position based on information in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), which discloses that a RN position does not require a BSN. The director gave little weight to the job postings and found the petitioner's degree requirement self-imposed. The director discussed the federal court's decision in *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000).

On appeal, counsel states that the proposed position requires knowledge of nursing as well as need-based medical care in emergency, intensive care, and neonatal intensive care units. Individual nurses, counsel asserts, possess experience and skills in a given nursing field, and proper matching of the nurse to the care required increases the quality of medical care that is provided. Referring to letters from Maxim Medical Staffing and New York Presbyterian Hospital, counsel maintains that experts in the nursing profession recognize that the proposed position requires a BSN, and states that a BSN is an industry standard. Counsel states that the beneficiary qualifies for the proposed position.

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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel's assertion that the proposed position requires a BSN is not convincing. The proposed position has a combination of duties that fall within the *Handbook's* classification of human resources, training, and labor relations managers and specialists, which includes managers in employment and placement, recruitment, and training, and registered nurses (RN). With respect to the educational requirements of the former occupation the *Handbook* states:

Because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, personnel administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

Based on the above passage, the *Handbook* relays that a baccalaureate degree in a specific specialty is not required for occupations in the classification of human resources, training, and labor relations managers and specialists.

Counsel states that the proposed position requires knowledge of nursing as well as need-based medical care in emergency, intensive care, and neonatal intensive care units. The *Handbook* relays that hospital nurses usually are assigned to one department such as surgery, maternity, pediatrics, the emergency room, or intensive care. Thus, an RN would have knowledge of the units described by counsel. According to the *Handbook*, a BSN is not required for an RN as three major educational paths exist for nursing: an associate degree in nursing (AND), a BSN, and a diploma. Thus, the nursing duties of the proposed position fail to require baccalaureate-level knowledge.

The AAO's conclusion, based on the evidence in the record, the *Handbook*, and the proposed job description, is that the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to two letters and job postings. The letter from New York Presbyterian Hospital delineates the advantages of employing a nurse with a BSN instead of an AND; yet, it does not state that the industry or the hospital require a BSN for the proposed position. The letter from Maxim Medical Staffing, a nursing staffing agency, states that the company requires a BSN and at least one year of experience for a placement and staffing supervisor position. The letter explains that this is a managerial position requiring knowledge of medical care and the ability to categorize the skills of agency nurses. The relevance of this letter is clear. Nonetheless, one employer's hiring practices are insufficient to establish an industry-wide requirement of a BSN.

For various reasons, the job postings are not persuasive in establishing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The Omni Recruiting Group, Inc. does not state that it requires a bachelor's degree in a specific specialty. The petitioner, a small staffing and recruitment agency, differs in nature from Palomar Pomerado Health, a healthcare facility; Eisenhower Medical Center and St. John's Regional Medical Center, medical facilities; Pediatric Services of America, Inc., a provider of pediatric healthcare with 130 locations; and Hoag Memorial Hospital Presbyterian, a hospital. No information is provided about the nature of Patient Care, Inc.; thus, the AAO cannot determine whether it is similar in nature to the petitioner. For these reasons, the postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier in this decision, the *Handbook* conveys that a baccalaureate degree in a specific specialty is not required for occupations in the classification of human resources, training, and labor relations managers and specialists, and that a BSN is not required for an RN. Thus, the proposed position does not have such complexity or uniqueness as to require a bachelor's degree in a specific specialty.

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. As discussed earlier in this decision, a bachelor's degree in a specific specialty is not required for occupations, such as the proposed position, that fall within the *Handbook's* classification of human resources, training, and labor relations managers and specialists, and its classification of RNs. Accordingly, 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 on this ground.

Because the proposed position does not qualify as a specialty occupation, whether or not the beneficiary qualifies for the proposed position is inconsequential in this proceeding.

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.