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U.S. Citizenship
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JUN 01 2005

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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 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 residential care facility that seeks to employ the beneficiary as a health services manager. 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. On appeal, counsel submits a brief.

Section 214(i)(1) of the Immigration and Nationality Act (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 a health services manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 18, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the petition and the letter of support, the beneficiary would perform duties that entail: participating in the development and periodic revision of policies and procedures to assure consistent efficient and safe operation of the facility; planning nursing, medical and administrative policies and activities for the petitioner's developmentally disabled clients; overseeing the dispensing of medications; writing weekly client summaries and change of condition charting; ensuring that the nursing care plans are properly implemented; conducting pre-admission interviews with clients, clients' physicians, families and legal representatives; familiarizing herself with the disabilities of each client and making day-to-day decisions regarding the proper therapies needed for each of them; monitoring and controlling expenditures on staff, supplies, equipment and services; directing the preparation of budget information and reports; monitoring the selection and performance of nursing, medical and administrative staff and services; overseeing operations of the facility by ensuring equipment and supplies are maintained to assure the safety of patients and staff; identifying and planning prompt corrective action for any issues with building safety or equipment and systems; and establishing procedures and standards for nursing and related staff. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in nursing science, health service administration or the equivalent.

The director found that the proffered position was not a specialty occupation.

On appeal, counsel states that the petitioner provided a detailed job description that clearly defines the duties of the position as a specialty occupation. Counsel also states that the director erred in describing the position as falling under the category of "worker supervisors and managers and advertising, marketing, public relations, translator."

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.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. The director addressed the issue of the proffered position as a health services manager, but then also discussed the position in terms of the *Handbook's* description for "office and administrative support worker supervisors and managers and advertising, marketing, public relations, translator." The AAO concurs with counsel that this second description is not relevant to the proffered position, which is a health services manager. While the *Handbook* states that the general requirement for a health services manager is a master's degree, and a bachelor's degree is adequate for some entry-level positions in smaller organizations, it also states, "Physician's offices and some other facilities may substitute on-the-job experience for formal education." The petitioner provided little information about its

business or worksite, so there is no evidence in the record to establish that it is a type of business that would require a bachelor's degree in a specific specialty rather than experience to fill the proffered position.

The petitioner did not submit any evidence regarding parallel positions in the petitioner's industry, nor does the record 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. It appears that this may be a new position, in which case the petitioner would not be able to meet this criterion. In the event that the proffered position is not a new position, there is no evidence in the record regarding the petitioner's previous hiring practices for health services managers.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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.

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.

An H-1B alien is coming temporarily to the United States to perform services in a specialty occupation. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b). 8 C.F.R. § 214.2(h)(1)(ii)(B). In this case, the petitioner did not establish that the beneficiary would be coming to the United States to perform services in a specialty occupation.

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.