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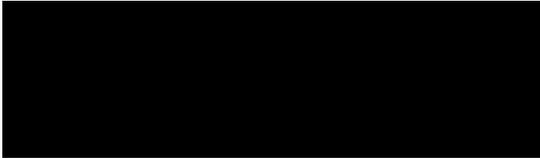
FILE: WAC 03 209 50201 Office: CALIFORNIA SERVICE CENTER Date: **NOV 01 2005**

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 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 sustained. The petition will be approved.

The petitioner is a rehabilitation services provider that seeks to employ the beneficiary as coordinator of its rehabilitation 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 basis that the petitioner had not established the proposed position as a specialty occupation. He also found the beneficiary unqualified to perform the services of a specialty occupation. On appeal, counsel submits a brief.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's RFE response and supporting documentation; (4) the director's denial letter; and (5) the Form I-290B and appellate brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a rehab coordinator. The petitioner's May 5, 2003 letter of support set forth the following description of the duties of the proposed position:

The duties of the Coordinator of Rehabilitation Services are varied and highly-detailed. He will plan, administer[,] and direct daily operation of rehabilitation programs such as physical, occupational, recreation[,] and speech therapies. He will consult with the medical and professional staff to coordinate joint patient and management objectives. He will likewise conduct conferences and plan training programs to maintain proficiency of clinical staff and introduce or orient to new methods and equipment. He will allocate professional staff on the basis of work load and availability of equipment. In coordination with the finance personnel, he will analyze operating costs and prepare budgets.

On appeal, counsel contends that the director erred in denying the petition. Counsel maintains that the proposed position qualifies for classification as a specialty occupation, and that the beneficiary is qualified to perform the duties of the position.

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.

In determining whether a position qualifies as a specialty occupation, Citizenship and Immigration Services (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 Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The director found that the position resembles a health services manager. The AAO agrees that a review of the duties of the proposed position finds them to be closely aligned to the responsibilities of medical and health services managers. As discussed in the 2004-2005 edition of the *Handbook*:

Healthcare is a business and, like every other business, it needs good management to keep it running smoothly. 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.

The structure and financing of healthcare is changing rapidly. 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 of 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. Increasingly, medical and health services managers will work in organizations in which they must optimize efficiency of a variety of interrelated services—for example, those ranging from inpatient care to outpatient followup care.

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. (Managers in nonhealth areas, such as administrative services, computer and information systems, finance, and human resources, are not included in this statement. For

information about them, see the statements on management occupations elsewhere in the *Handbook*.)

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

Clinical managers have more specific responsibilities than do generalists, and have training or experience in a specific clinical area. 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.

In that the proposed position appears closely aligned to that of a medical and health services manager, the AAO next turns to the *Handbook's* discussion of whether the occupation normally requires a baccalaureate or higher degree, or its equivalent, for entry into the profession. The director found the position was not a specialty occupation. The *Handbook* reports the following educational requirements for those seeking employment as medical and health services managers:

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. Physicians' offices and some other facilities may substitute on-the-job experience for formal education.

For clinical department heads, a degree in the appropriate field and work experience may be sufficient for entry. However, a master's degree in health services administration or a related field may be required to advance. For example, nursing service administrators usually are chosen from among supervisory registered nurses with administrative abilities and a graduate degree in nursing or health services administration.

While a health services manager is not always a specialty occupation, for those smaller facilities where on-the-job experience can substitute for formal education, it may also be considered a specialty occupation. The petitioner is a rehabilitation services provider with 54 employees. Its staff is comprised of physical therapists, occupational therapists, speech language pathologists, and administrative staff. In that the petitioner's services are focused mainly on rehabilitation, the AAO finds that the educational requirements for the position would be similar to those of a clinical department head.

As such, the position satisfies the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree or its equivalent in the appropriate field is normally the minimum requirement for entry into the position. The AAO therefore agrees with the petitioner's contention that the proposed position qualifies for classification as a specialty occupation.

The AAO next turns to the issue of whether the beneficiary is qualified to perform services in a specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), in order to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (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 beneficiary earned his degree abroad, so he is unqualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

The second criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C) requires a demonstration that the beneficiary holds 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.

The record contains an evaluation of education issued by Global Services Associates, Inc. (GSA), dated April 30, 2003. The GSA evaluator determined that the beneficiary's foreign degree is equivalent to a bachelor's degree in physical therapy from an accredited institution of higher education in the United States.

Therefore, the beneficiary's foreign education satisfies 8 C.F.R. § 214.2(h)(4)(iii)(C)(3). As such, the beneficiary is qualified to perform the duties of the specialty occupation.

The petitioner has established both that the position qualifies for classification as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the petition will be approved.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.