

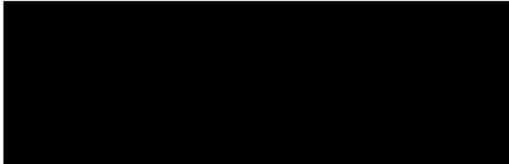
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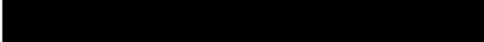
U.S. Citizenship
and Immigration
Services

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FILE: WAC 01 230 50819 Office: CALIFORNIA SERVICE CENTER Date: ~~MAY~~ 02 2008

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.


for Robert P. Wiemann, Chief
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 home health company that seeks to employ the beneficiary as a case manager. 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 concluding that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation. The director noted that the duties of the proposed position are similar to the duties of a registered nurse.

The record of proceeding before the AAO contains (1) the 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) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 qualification for classification as a specialty occupation, the proposed 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 proposed position.

The petitioner is a home health company with 40 employees and a gross annual income of \$1.6 million. In response to the director’s request for evidence, the petitioner submitted a job description for the proffered position which described the proposed duties as follows:

- A. **Screening referred patients.** The primary screening involves a six-page form called “OASIS,” which is federally-mandated to set up a medicare account. This form can only be filled out by a Registered Nurse, since many of the seventy-some-odd questions on the form require medical evaluations of a complexity that LPN’s or NA’s cannot properly conduct. This requires a knowledge of medical conditions, terminology, and usual and accepted treatments, which [the beneficiary] obtained in her nursing studies. [The beneficiary] will spend approximately 35% of her usual workweek at this task. . . .
- B. **Development and Implementation of the interdisciplinary care plans within the financial constraints of the reimbursement allowed by the patient’s insurer or funding source.** [The beneficiary] will examine the patient’s diagnosis, the doctor’s prescriptions and treatment recommendations, and available treatment and payment options to arrive at an acceptable plan for the client. Again, this responsibility presupposes a knowledge of available care options and treatment plans, plus knowledge of medical terminology, which [the beneficiary’s] nursing degree and years of experience have given her. This involves another 30% of the usual work hours.
- C. **Provide on-going evaluation to monitor effectiveness of service, and determine whether established goals are being met within appropriate time frames.** [The beneficiary], using her medical knowledge of treatments and responses, will supervise the in-home care providers to determine if the client’s plan of care should be recommended to a physician for revision, conduct performance reviews of the care providers, coordinate treatment options and payment options, and will provide material backup to aid in the resolution of any complaints regarding treatment received, recovery time, etc. Approximately 25% of her time will be spent at this task.
- D. **Participate in the marketing of the facility’s managed care referral sources and networking at case management, rehabilitation and similar professional associations.** [The beneficiary] will represent the facility at seminars and conventions,

and stay current of important developments in the field. This will only average out to be about 4% of her work time.

- E. **Maintain and develop relations with referring case managers and hospital discharge planners.** Once more, it should be emphasized that these good relations among professionals are based on respect for the knowledge and competence one sees in the other person. Only about 4% of [the beneficiary's] time will be spent specifically on this activity.
- F. **Provide clinical sales support to Marketing director.** This will require the use of about 2% of [the beneficiary's] time.

In the director's January 16, 2002 decision, she noted that the proposed position consists of the same duties performed by a nurse as described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director noted that the petitioner did not establish that a baccalaureate or higher degree or its equivalent is normally the minimum required for entry into the proffered position.

On appeal, counsel for the petitioner asserts that the duties of the proffered position are not similar to the duties of a nurse, and the proposed duties are specialized and complex enough to require a bachelor's degree. Counsel states that the duties of a case manager are specialized and complex because they must be able to "analyze and assess the required patient care and apply the correct hospital administration insurance program."

In determining whether a proposed 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. Although the petitioner states that the beneficiary will not provide direct patient care, it is not clear how the beneficiary will "screen referred patients" and "develop and implement care plans" without providing direct patient care. In addition, the job description does not indicate that the beneficiary will supervise nurses that will provide the direct patient care. The petitioner does not provide corroborating evidence to establish that the case manager will not provide any direct patient care and instead will only function as an administrative manager. Thus, the AAO finds that the duties and responsibilities of the proposed position, while generally described, are encompassed within the *Handbook's* entry for registered nurses. As described:

Registered nurses (RNs), regardless of specialty or work setting, perform basic duties that include treating patients, educating patients and the public about various medical conditions, and providing advice and emotional support to patients' family members. RNs record patients' medical histories and symptoms, help to perform diagnostic tests and analyze results, operate medical machinery, administer treatment and medications, and help with patient follow-up and rehabilitation.

[N]urse administrators supervise nursing staff, establish work schedules and budgets, and maintain medical supply inventories

As to whether the minimum academic entry requirement into the occupation of registered nurse is a baccalaureate or higher degree, or its equivalent, the *Handbook* states:

In all States and the District of Columbia, students must graduate from an approved nursing program and pass a national licensing examination, known as the NCLEX-RN, in order to obtain a nursing license All States require periodic renewal of licenses, which may involve continuing education.

There are three major educational paths to registered nursing: A bachelor's of science degree in nursing (BSN), an associate degree in nursing (ADN), and a diploma. BSN programs, offered by colleges and universities, take about 4 years to complete ADN programs, offered by community and junior colleges, take about 2 to 3 years to complete Diploma programs, administered in hospitals, last about 3 years Generally, licensed graduates of any of the three types of educational programs qualify for entry-level positions as staff nurses.

In that the *Handbook* indicates that individuals with associate degrees in nursing, as well as nursing diplomas, may obtain entry-level employment as registered nurses, the AAO finds that the petitioner's proffered position does not qualify as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the one job posting submitted by counsel in response to the director's request for evidence. However, counsel has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in positions that are parallel to the proffered position and found in organizations similar to the petitioner.

There is no information in the record to establish that the company advertising its vacancy in the submitted job posting is similar in size, scope, or scale of operations, business efforts, or expenditures to the petitioner. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO has no basis to conclude that the job posting submitted by counsel is from an organization that may be considered "similar" to the petitioner.

Moreover, this advertisement provides too little information regarding the duties of the position that would allow the AAO to undertake a meaningful analysis as to whether the position is in fact "parallel" to the position proposed here. The AAO notes that the advertisement is for an RN case manager, thus, it requires the position to provide nursing duties, which does not indicate similarity to the proffered position. The fact that this position shares a few similar duties with the petitioner's proposed position does not mean that it is in fact a parallel position. Finally, the AAO notes that one posting is too few to establish an industry-wide standard.

Accordingly, the proposed position does not qualify for classification as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a demonstration that the position is so complex or unique that it can only be performed by an individual with a degree. There has been no demonstration that the proposed position is more complex or unique than the general range of registered nurses in other, similar organizations, which would not normally require a degreed individual. The *Handbook* indicates that such positions may not require at least a baccalaureate degree in a specific specialty; and the evidence of record does not establish the proposed position as unique from or more complex than the general range of such positions.

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In its response to the director's request for evidence, the petitioner submitted two employment applications for the position of RN case manager. The petitioner did not submit copies of the employees' diplomas. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Accordingly, the petitioner has not established the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a petitioner establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO refers to the *Handbook* excerpts quoted previously in this decision, which state that a bachelor's degree in a specific specialty is not the normal minimum entry requirement for positions such as the one proposed here. The duties of the proposed position do not appear more specialized and complex than those of the corresponding positions as set forth in the *Handbook*. The AAO finds nothing in the record to indicate that the beneficiary, in her role as a case manager at the petitioner's place of business, would face duties or challenges any more specialized and complex than those outlined in the *Handbook*.

Therefore, for the reasons related in the preceding discussion, the proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. The proposed position in this petition is not a specialty occupation, so the beneficiary's qualifications to perform its duties are inconsequential. Accordingly, the AAO will 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.