

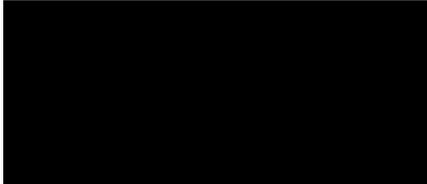


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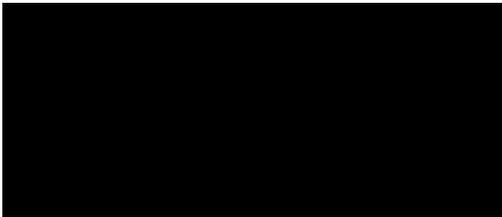


FILE: WAC 03 229 54956 Office: CALIFORNIA SERVICE CENTER Date: AUG 24 2005

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 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 an adult day health care center that seeks to employ the beneficiary as a social service director. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 a social service director. 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 planning community outreach programs, specifically, organizing on-site seminars to private physicians, acute facilities, and hospitals in order to market and explain how the petitioner may fulfill the psychological needs of elderly patients while enabling them to use medical care to achieve their optimal physical well-being. The beneficiary will supervise and coordinate facility operations, admissions, and resident care which involves: completing a social services medical chart identifying resident personnel, social and economic needs, minimum data set assessments, quarterly updates, patient care plan entries to meet federal/state licensing requirements, facility policies, procedures, and residents' needs; providing information and assistance; providing information to residents and their families regarding medicare/medi-Cal; interpreting policies and procedures to staff, residents, visitors, and governmental agencies; and maintaining quality assurance reports and grievance statements. The beneficiary will analyze and improve the efficiency of the facility and the quality of healthcare, and structure social and recreation programs that provide a stimulating living environment for residents to maintain and enhance their independent living skills. The petitioner requires a baccalaureate degree in nursing or a related field.

The director stated that the proposed position resembles a health service manager as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this occupation does not require a baccalaureate degree. The director found that the evidence was not persuasive in showing that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree. According to the director, the proposed duties are similar to those of a general manager, which is not normally considered a professional occupation if the position involves supervising employees that are not members of a specialty occupation. The director found the beneficiary does not have the experience or qualifications to plan, organize, coordinate, and supervise the delivery of health care services.

On appeal, counsel states that the proposed position is a specialty occupation. According to counsel, the submitted online employment advertisements, and information from the *Occupational Information Network (O\*Net)* and the *Handbook* reveal that employers normally require a bachelor's degree in a related field for the proposed position. Counsel states that the proposed position is not analogous to a general manager, but is similar to a health service manager as that occupation is depicted in the *Handbook*. Counsel discusses the beneficiary's work experience and academic background and asserts that the beneficiary is not required to have experience in 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)).

Counsel asserts that the proposed position is a specialty occupation because the *O\*Net* indicates that a social service director requires a bachelor's degree. The *O\*Net* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the director did not err in discounting the *O\*Net* information.

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.

The duties of the proposed position resemble those of a head nurse or nurse supervisor as those occupations are described in the *Handbook*. The *Handbook* delineates head nurses or nurse supervisors as:

[Directing] nursing activities, primarily 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 AAO finds that the proposed duties are administrative in nature, and are encompassed within the description of a head nurse or nurse supervisor as shown in the above excerpt from the *Handbook*. The proposed duties to plan community outreach programs; supervise and coordinate facility operations, admissions, and residents; provide information to residents and their families regarding medicare/medi-Cal; interpret policies and procedures; maintain quality assurance reports and grievance statements; analyze and improve the efficiency of the facility and the quality of healthcare; and structure social and recreation programs fit within the *Handbook's* description of a head nurse or a nurse supervisor as these occupations involve a fairly broad range of administrative duties including directing nursing activities, planning work

schedules and assigning duties, providing or arranging for training, visiting patients to observe nurses and to ensure that the patients receive proper care, and ensuring that records are maintained.

The *Handbook* indicates that a head nurse or nurse supervisor does not require a bachelor's degree in a specific specialty; it states "students must graduate from an approved nursing program and pass a national licensing examination in order to obtain a nursing license," and relays that the occupation has "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."

The AAO concludes, from the evidence to which it has referred, that the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): 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 job postings and decisions in *Matter of General Atomic Company* and *Young China Daily* to show that the size of an operation or industry bears no rational relationship to the need for a professional. However, the evidence does not persuasively establish this criterion. The language of the first alternative prong of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) is clear in stating that a specific degree requirement must be common to the industry in parallel positions among similar organizations; thus, the nature the petitioner's operation and its industry are relevant. In the job postings the employers differ from the petitioner, which is a skilled nursing facility, or their nature is not disclosed. The healthcare facility seeking a clinical coordinator/nurse manager differs from the petitioner in that it provides surgical services, KCI does not describe its nature, BioScrip ADIMA is a pharmaceutical healthcare organization, and Seabrook House is an alcohol and drug treatment center. Consequently, the postings do not establish that a degree requirement is common to the industry in parallel positions among similar organizations.

No evidence establishes the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is that the petitioner show the proffered position is so complex or unique that it can be performed only by an individual with a degree. The proposed duties resemble those of a head nurse or nurse supervisor, which are occupations that the *Handbook* reveals do not require a bachelor's degree in a specific specialty. As such, the petitioner fails to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner 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. The proposed duties reflect those of a head nurse or nurse supervisor, which are occupations that do not require a bachelor's degree in a specific specialty. No evidence shows that the proposed position has such specialization and complexity that the

knowledge required to perform it is usually associated with the attainment of a baccalaureate or higher degree. Accordingly, the petitioner fails to establish the criterion at 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.

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.