

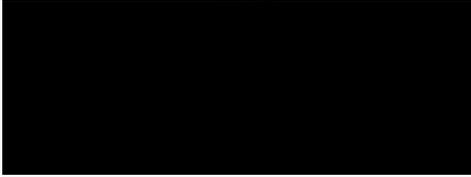
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U.S. Department of Homeland Security
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U.S. Citizenship
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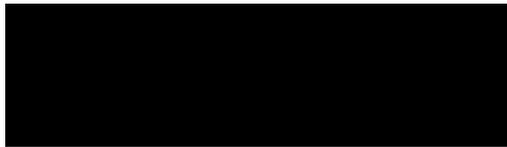
FILE: WAC 03 015 55607 Office: CALIFORNIA SERVICE CENTER Date: JAN 05 2005

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 dismissed. The petition will be denied.

The petitioner is a home health facility that seeks to employ the beneficiary as a part-time utilization review coordinator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 part-time utilization review coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 17, 2002 letter in support of the

petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: coordinating special Medicaid programs; researching availability and utilization of program standards and provider qualification requirements; identifying problems affecting program growth; recommending necessary program requirement changes to management; developing and implementing statewide quality assurance surveys; providing technical assistance, consultation, and training in program areas; monitoring and reviewing hospital utilization review plans and meetings to determine compliance with state and federal regulations; reviewing and evaluating in-house patient charts in relation to Medicaid and state and local hospitalization service criteria; ensuring that hospital admissions documentation is included in patient records; making recommendations for corrective action; monitoring claims payments through the Medicaid Management Information System; monitoring non-compliance with state and federal utilization review guidelines; providing training to quality assurance coordinators and practitioners; consulting with medical consultants in the review of appeals related to length of hospitalization; and handling inquiries from state and federal agencies. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in social services, nursing, or a health related field.

The director found that the proffered position was not a specialty occupation because the job is primarily that of a nurse. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of a utilization review coordinator, and is not a nursing position. Counsel states further that the minimum educational requirement for the proffered position is a bachelor's degree, and submits a job description for a Utilization Review/Quality Assurance Manager published by the University of Southern California. Counsel also states that the petitioner had previously provided copies of the *Enhanced Guide for Occupational Exploration (EGOE)*, and an occupational guide from the State of Virginia, as supporting documentation.

Regarding the job description for a Utilization Review/Quality Assurance Manager published by the University of Southern California, it is noted that the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to include the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

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.

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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation. Counsel states that the publications that were previously submitted by the petitioner, the *EGOE* and the occupational guide from the State of Virginia, specifically address the position of Utilization Review Coordinator. In a letter dated July 29, 2003, counsel states that the *EGOE* "clearly states in its Appendix D that a bachelor's degree is required for the position of Utilization Review Coordinator." The record, however, does not contain the *EGOE*'s description of duties for this position and, therefore, it cannot be determined that the Utilization Review Coordinator position described in the *EGOE* is parallel to the proffered position. Furthermore, the petitioner has not demonstrated that the proffered position is parallel to the Utilization Review Coordinator position that is described in the publication from the State of Virginia, which requires that the individual have considerable knowledge of the health and social service systems, community resources and volunteer agencies, and demonstrated ability to work independently with a variety of governmental agencies and health care providers. It is noted that the petitioner does not specify such requirements for the proffered position. Moreover, neither the *EGOE* nor the guide from the State of Virginia indicates that a baccalaureate degree in a specific specialty is required for the position.

A review of the Registered Nurse job description in the *Handbook*, 2004-2005 edition, confirms the accuracy of the director's assessment to the effect that, the job duties parallel those responsibilities of a nurse. The description of duties for nursing care facility nurses indicate that much of their time is spent on administrative tasks. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a nurse job.

The record contains no evidence regarding parallel positions in the petitioner's industry. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has 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. As counsel does not address this issue on appeal, it will not be discussed further.

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.

Beyond the decision of the director, the record does not contain an evaluation of the beneficiary's credentials from a service that specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). For this additional reason, the petition may not 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 not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.